

Consultation on Building Standards Enforcement and Sanctions

Analysis of consultation responses

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Executive Summary

A consultation on [Building Standards Enforcement and Sanctions](#) was open between 6 October 2023 and 22 January 2024. The consultation aimed to gather views about proposals to strengthen the existing enforcement powers of local authorities and change the penalties for building standards offences. In total, 43 consultation responses were received from 18 individuals and 25 organisations.

Q1 - Do you agree with the inclusion of holding owners accountable for new or converted buildings which are occupied illegally?

There was widespread support for this proposal. Among all respondents, 90% agreed to some extent; 60% strongly agreed and 30% agreed. Over four fifths (84%) of individuals agreed (56% strongly). All but one organisation agreed (96%, with 64% strongly agreeing), and all local authorities and professional associations were in favour.

Three quarters of respondents left a qualitative response in Q1, reiterating strong support for the proposal. The most prevalent theme was agreement with the proposal to improve enforcement and ensure buildings are not occupied without a completion certificate or temporary occupation certificate. This view was expressed by many respondents, including a majority of local authorities who left an open comment. The second most prevalent theme was explicit agreement that the building owner, rather than tenants, should be held accountable, hence the need for the change.

Q2 - Do you agree with the proposal to include a new provision for the removal of work on the section 27 Building Warrant Enforcement Notice?

Over four fifths (83%) supported this proposal; over half (53%) strongly agreed, and three in ten (30%) agreed. Three quarters (78%) of individuals were in favour (56% strongly agreed), compared to almost nine in ten organisations (88%, with 52% strongly agreeing). However, none of the three commercial organisations who responded to the consultation strongly agreed.

Almost three fifths of respondents left an open comment in response to Q2. Given the high support for the proposal, most comments elaborated on the potential benefits of introducing the change; typically that a new provision would act as a deterrent, improve compliance and offer more options to local authorities and owners. Several organisations, including both those who agreed with the proposal and those who neither agreed nor disagreed, raised additional points for the Scottish Government to consider, particularly the need for flexibility in applying the provision.

Q3 - Do you agree that the provision of a standalone stop notice under section 27 would act as a helpful deterrent?

High levels of total agreement with this proposal were recorded among all respondents (86%), individuals (89%) and organisations (84%), with over half of each audience strongly agreeing and one third agreeing. The level of agreement varied by type of organisation, with 60% of local authorities strongly agreeing compared to 43% of professional associations and 33% of commercial organisations. Only one organisation - a local authority – expressed disagreement with the proposal in the closed question.

Two thirds of respondents left a comment in Q3; all but three agreed with the proposal in the closed question. These comments explained the basis of their support for the proposal, noting it was a clear deterrent. While there was widespread agreement, several respondents, including individuals and all types of organisations, argued that appropriate measures are needed to ensure a stop notice is enforced.

Q4 - Do you agree with enforcement after the acceptance of a completion certificate for High Risk Buildings?

Overall, two thirds (67%) of respondents supported this proposal to some extent; 30% strongly agreed and 37% agreed. However, 14% of respondents disagreed with the proposal. Support was higher among individuals than organisations - 78% of individuals agreed, with 39% strongly agreeing, compared to 60% total agreement and 24% strongly agreeing among organisations. Both individuals, local authorities and professional associations expressed some disagreement.

The views expressed by the three fifths of respondents who left an open comment in response to Q4 were typically in line with the levels of support and opposition recorded in the closed question. The most prevalent theme raised by many, half of whom were local authorities, was an agreement that enforcement after the acceptance of a completion certificate could be required, for High Risk Buildings in particular. Some local authorities, including a mix of those who agreed, disagreed or were neutral about the proposal, sought further clarification on a range of issues. Some respondents, including a mix of those who agreed, disagreed or were neutral about the proposal, expressed a concern that this new measure could mean the existing inspections to achieve a completion certificate are not detailed enough to uncover compliance issues

Q5 - Do you agree that the introduction of a time limit is necessary?

A majority of all types of respondents agreed with introducing a time limit. Seven in ten (70%) agreed overall, with similar levels recorded by both individuals (67%) and organisations (72%). Support was highest among local authorities (80%).

Q6 - Do you agree with the introduction of a 10-year time limit for taking action on non-compliant work?

Mixed views were expressed on the introduction of a 10-year time limit. Overall, just under half (47%) were in favour, a further 47% opposed, and 7% did not answer. Individuals were more likely to be opposed than in favour (56% compared to 44% respectively). Conversely, 48% of organisations were in favour and 40% were opposed. While support was lower among professional associations (29%), they were also least likely to oppose the proposal (29%), with the remaining 43% not answering.

Q7 - Do you have any views on the 10-year time limit proposed?

Almost three quarters of respondents left an open response in Q7. Just under half of respondents agreed with both proposals for a time-limit. Among this group, most left brief comments reiterating their agreement; some reflected on the opportunity to introduce greater alignment and consistency across local authorities and the UK.

One quarter agreed with the introduction of a time limit, but not with the 10-year proposal, primarily arguing that this is too long. Conversely, one quarter disagreed with both proposals. In their comments, these respondents called for longer limits, or for no time limit for taking action.

Q8 - Do you agree with the level of fines proposed?

There was widespread support for the level of fines proposed i.e. up to a maximum of £50,000. Overall, 79% were in favour, with 72% of individuals and 84% of organisations agreeing. All organisation types agreed, ranging from 93% of local authorities to 67% of commercial organisations.

Open comments on the proposal were provided by three fifths of respondents, and these typically reflected the widespread support recorded in the closed question. While many comments were expressions of general support, several respondents called for penalties proportionate to the type of work or non-compliance in question. Some who expressed opposition in the closed question suggested in their open comment that they supported financial penalties but felt the proposed level of fines was too low to act as a deterrent.

While general supportive comments were the most prevalent theme, several respondents called for penalties which are proportionate to the type of work or non-compliance in question. Some who expressed opposition in the closed question left comments suggesting they supported financial penalties but felt the level of fines proposed was too low to act as a deterrent.

Q9 - Do you agree with the option to include a custodial sentence?

Very high levels of support were recorded for the option to include a custodial sentence. Overall, almost nine in ten (88%) of respondents agreed, with the same high agreement recorded by both individuals (89%) and organisations (88%). All types of organisations agreed, ranging from 93% of local authorities to 67% of commercial organisations.

Just over half of respondents provided an open answer in Q9. As with Q8, the high levels of support recorded in the closed question were reflected in open comments. The two most prevalent themes were general support for including a custodial sentence, and calls for the use of a custodial sentence to be proportionate to the seriousness of non-compliance. Only three respondents who disagreed with the closed question left open comments, arguing that a financial penalty and existing legislation are sufficient or expressing concern about the impact on verifiers; this latter point was also noted by a small number who supported the proposal.

Q10 - Are there any proposals in this consultation which you consider impact or have implications on people with protected characteristics?

A majority of most groups felt that the proposals did not impact people with protected characteristics. Overall, 53% felt they did not, 12% that they did, and 15% were unsure or did not answer. Opinion varied among organisations; while all commercial organisations and 67% of local authorities felt there should be no impact, 86% of professional organisations were unsure or did not answer. Just over a quarter of respondents provided an open comment in Q10. Most comments were brief, and there was little consistency across the points raised.

Q11 - Do you think that any of the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)?

Opinions on whether the proposals could impact businesses varied. Overall, 53% felt there could be an impact, 26% did not, and 21% were unsure or did not answer. While 44% of individuals thought there could be wider implications, this rose to 60% of organisations. Local authorities were notably more likely to believe there would be an impact (73%).

The most prevalent theme in the comments left in Q11, outlined by many respondents and particularly local authorities, was that the proposals could place additional demands on resources, staff time, training and workforce planning. Several stated that increased statutory or enforcement responsibilities would be time and resource-consuming. Two organisations raised the potential negative impact of the proposals on building costs, while three organisations felt that the proposals could have positive implications for their work, or more generally

Q12 - Do you think that any of the proposals in this consultation have any impact or implications on island communities?

Most respondents were unsure about the implications for island communities (49%) or did not answer (7%). Just over one in ten individuals (11%) and organisations (12%) thought there could be an impact, though organisations were more likely to say they were unsure or not answer (68%).

One in five respondents provided a comment at Q12. The most common theme, outlined by three respondents, was that island communities face logistical challenges, possibly making compliance with building standards harder. It was, however, noted that island communities typically have fewer High Risk Buildings.

Conclusions

Overall, there was broad support for the proposals outlined in the consultation paper. Respondents typically agreed that the proposals provide a clearer, stronger deterrent that should help to improve compliance, enable more effective enforcement and ensure building safety. However, respondents raised a variety of points for the Scottish Government to consider and clarify when developing the final proposals.

1. Introduction

Background

The building standards system was established by the Building (Scotland) Act 2003 to ensure that all building works are safe, and that the system protects the public interest. Following the fire at Grenfell Tower in 2017, a Ministerial Working Group was set up to review building and fire safety regulatory frameworks. The Group commissioned two Expert Review Panels for building standards; recommendations by the Review Panel on Compliance and Enforcement concluded that, whilst the core elements of the current building standards system should be maintained, some reshaping of the system was necessary to ensure that it addressed identified weaknesses.

The Building Standards Futures Board was set up to provide guidance and direction on developing and implementing the recommendations. The Board's remit is strategically advising and directing a broad programme of work to improve the performance, expertise, resilience and sustainability of the building standards framework and services across Scotland.

A [2018 consultation on Building Standards Compliance and Fire Safety](#) confirmed strong support for increased fines for those not complying with building regulations. A subsequent [Compliance and Enforcement consultation](#) in 2021-2022 proposed ways to strengthen the building standards system for High Risk Buildings, including introducing a Compliance Plan approach and hiring a Compliance Plan Manager.

This latest [Building Standards Enforcement and Sanctions](#) consultation aimed to gather views about proposals to strengthen the existing enforcement powers of local authorities and change the penalties for building standards offences. The findings from this analysis of responses to the consultation will be used by the Scottish Government to finalise their proposals.

The consultation was open between 6 October 2023 and 22 January 2024. Of the 12 closed questions, 10 included an option to provide additional explanatory comments. The questions mostly centred on strengthening provisions in the Building (Scotland) Act 2003, with proposals to:

- include owners in the offences for occupation without completion (section 21).
- include removal of work, introduce a standalone stop notice, and clarify the scope of section 27 to take action after acceptance of a completion certificate for Higher Risk Buildings (HRBs) with a time limit for serving enforcement notices (section 27).
- increase penalties for offences (section 48) that will also apply to offences by bodies corporate etc. (section 49).

To inform impact assessments, three further questions sought to identify any additional impact these changes may have.

Respondent profile

In total, 43 consultation responses were received¹. Almost all were submitted via the online consultation platform, Citizen Space. Those received in an alternative format, for example, an email or PDF document, were reviewed separately by the research team.

Individuals provided 18 responses to the consultation; the remaining 25 were from organisations. To aid analysis, organisations were grouped on the nature of their work. The largest number of organisations were from local authorities and their associated bodies (15)², professional associations and membership organisations (7) and commercial organisations and manufacturers (3).

Analysis approach

The Lines Between was commissioned to provide a robust, independent analysis of the responses to the public consultation. The main purpose of consultation analysis is to understand the full range of views expressed, not to quantify how many people held particular views. This report provides a thematic analysis of responses based on the analysis approach outlined below.

Quantitative analysis

The analysis of responses to each question begins with a summary of the closed question data. Each table shows the number and percentage responses of all 43 respondents, illustrating the range of opinions held across the total sample. As this sample is self-selecting, no conclusions can be drawn about the level of agreement or disagreement among the general public. Each table also includes the results broken down by individual and organisational responses and by type of organisation. Please note that figures in the tables may not add to 100% due to rounding.

Qualitative analysis

Qualitative analysis identifies the key themes across responses to each question. The research team developed a draft coding framework based on a review of the consultation questions and a sample of responses. During the coding process, new codes were created if additional themes emerged.

In a small number of instances where alternative format responses contained information that did not align with specific questions, analysts exercised judgment about the most relevant place to include this material for analysis purposes.

Where appropriate, quotes from a range of participants are included to illustrate key points and provide useful examples, insights and contextual information. In some instances, these quotes are long, but they have been included to ensure the detail and complexity of the points raised are reflected accurately.

¹ One additional response was removed from the analysis as the responses did not fall within the scope of the consultation.

² One local authority submitted two responses. These came from different representatives of the organisation and have both been included in the analysis.

It is not possible to detail every response in this report; a few organisations shared lengthy submissions which reflect their specific subject matter expertise. These responses are referenced where possible. Full responses to the consultation, where permission for publication was granted, can be found on the [Scottish Government's consultation website](#).

Weight of opinion

When reviewing the analysis in this report, we ask that the reader consider that public consultation of this kind means anyone can express their views; individuals and organisations interested in the topic are more likely to respond than those without a direct or known interest. **This self-selection means the views of respondents do not necessarily represent the views of the entire population.**

This report presents the themes identified in responses from most to least commonly identified. All themes, including views shared by small numbers of respondents, are covered; an insightful view expressed by a very small number of participants is not given less weight than more general comments shared by a majority.

Similarly, all responses have an equal weighting. We recognise this means a response from an individual has the same weight as the response from an organisation which may represent many members, but this approach ensures all views are presented.

Qualitative analysis of open-ended questions does not permit the quantification of results. However, to assist the reader in interpreting the findings, a framework is used to convey the most to least commonly identified themes in responses to each question:

- The most common/second most common theme; the most frequently identified.
- Many respondents; mentioned by more than 10, another prevalent theme.
- Several respondents; 6-10, a recurring theme.
- Some respondents; 4-5, another theme.
- Three/two/one; a singular comment or a view identified a few responses.

2. Section 21 - Occupation or use without completion certificate

The first consultation question concerned section 21, an existing provision in the Act that gives local authorities powers to take action (i.e. refer case to the courts), for the offence of occupation without a completion certificate against “any person who occupies or uses a building”. The existing provision allows local authorities to take action on the persons occupying/using the building, but not on the building owner who is allowing the building to be occupied/used. Amending section 21 to include an offence by the building owner would enable local authorities to take action on them.

Q1 - Do you agree with the inclusion of holding owners accountable for new/converted buildings which are occupied illegally?

	Strongly agree	Agree	Neither	Disagree	Strongly disagree	No answer
No. of all respondents (43)	26	13	2	1	0	1
% of all respondents (43)	60	30	5	2	0	2
% of individuals (18)	56	28	6	6	0	6
% of organisations (25)	64	32	4	0	0	0
- Local Authority (15)	80	20	0	0	0	0
- Professional assoc. / membership org (7)	43	57	0	0	0	0
- Commercial org / manufacturer (3)	33	33	33	0	0	0

There was widespread support for this proposal. Among all respondents, 90% agreed to some extent; 60% strongly agreed and 30% agreed. Over four fifths (84%) of individuals agreed (56% strongly). All but one organisation agreed (96%, with 64% strongly agreeing), and all local authorities and professional associations were in favour.

Three quarters of respondents left a qualitative response in Q1, reiterating strong support for the proposal. Most highlighted that the change would result in improved enforcement, while other individuals and organisations expressed their agreement that the building owner, rather than tenants, should be held responsible.

Allows improved enforcement

The most prevalent theme was agreement with the proposal to improve enforcement and ensure buildings are not occupied without a completion certificate or temporary occupation certificate. This view was expressed by many respondents, including a majority of the local authorities who left an open comment. These comments included the argument that amending section 21 would better align Scotland’s regulations with other UK nations, close a loophole, and address the current anomaly where action can be taken against occupiers but not owners.

“We agree with the inclusion of holding owners accountable for new/converted buildings which are occupied illegally. While the current provision allows local authorities to take action on the persons occupying/using the building, it does not hold the building owner accountable for allowing the building to be occupied/used without the necessary certificates. This can create a situation where owners are not incentivised to ensure that their buildings comply with building standards and regulations before they are occupied.” – Local Authority

Two local authorities stated that occupation without a completion certificate does not often occur. However, one noted that it is more prevalent in housing developments and suggested the proposal should be extended to allow action to be taken against developers. Another professional/membership body reported seeing multiple examples of non-compliant buildings and, while agreeing with the proposed responsibilities for owners, stressed that Late Completion Certificates and the current level of penalties are not sufficient to deter non-compliance.

The owner, not the tenant, should be held responsible

The second most prevalent theme in responses was explicit agreement that the building owner should be held accountable, hence the need for the change. In these comments were suggestions that owners should have the responsibility to ensure compliance with building standards legislation, especially as, in many cases, they would be the ‘relevant person’ with whom responsibility lies under the Act. However, an organisation that agreed with the proposal noted the need for a fair approach:

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

Comments on owners’ responsibilities argued that tenants or those occupying a building generally would not know if a building complied with regulations and, therefore, should not be held responsible. A few stressed that occupiers could be vulnerable or in need of accommodation.

Further clarification needed

While there was widespread support for the proposal, some respondents asked for further clarification on issues such as.:

- Whether owners should be accountable if squatters occupy a building.
- What work constitutes an alteration.
- Who is responsible for buildings with multiple owners, leased arrangements, or where local authorities mandate or undertake work if owners cannot, such as in tenement flats.

Other points raised

Two individuals noted that occupiers might find it difficult to establish if a building meets regulations, or if their solicitor had obtained necessary certificates when buying a new build. One felt guidance should be provided for homeowners on when to obtain building warrants and to use inspectors to check completed works.

Two organisations suggested new legislation may not be necessary for non-domestic buildings:

“It could be that the legislation as it currently exists may be adequate to prosecute the building owner. If the owner lets the building out to tenants, then the owner is ‘using’ the building for commercial purposes and, therefore, the legislation allows them to be prosecuted as 21(5) refers to ‘occupies or uses a building?’” – Local Authority

3. Section 27 - Removal of work

Starting work without a building warrant or not in accordance with the building warrant is an offence against the Act, but local authorities can serve a notice under section 27 Building Warrant Enforcement Notices to remedy the situation. Local authorities have made the Scottish Government aware that when non-authorized work is brought to their attention, they discuss and give owners options on how they may proceed. These are to comply with the requirements of the Act i.e., obtain a building warrant where one is required, or comply with the building regulations.

However, some owners would prefer to remove the work rather than make changes to existing work. The current wording of the Act does not give local authorities the option to have the work removed where this is considered a more appropriate response, only that work meets building regulations. Q2 asked respondents to consider a new provision for removing any work done without a building warrant or not done in accordance with building regulations. This aims to give local authorities more flexibility with building owners on remedying the situation.

Q2 - Do you agree with the proposal to include a new provision for the removal of work on the section 27 Building Warrant Enforcement Notice?

	Strongly agree	Agree	Neither	Disagree	Strongly disagree	No answer
No. of all respondents (43)	23	13	6	0	0	1
% of all respondents (43)	53	30	14	0	0	2
% of individuals (18)	56	22	22	0	0	0
% of organisations (25)	52	36	8	0	0	4
- Local Authority (15)	67	33	0	0	0	0
- Professional assoc. / membership org (7)	43	43	0	0	0	14
- Commercial org / manufacturer (3)	0	33	67	0	0	0

Over four fifths (83%) supported this proposal; over half (53%) strongly agreed, and three in ten (30%) agreed. Three quarters (78%) of individuals were in favour (56% strongly agreed), compared to almost nine in ten organisations (88%, with 52% strongly agreeing). However, none of the three commercial organisations who responded to the consultation strongly agreed.

Almost three fifths of respondents left an open comment in response to Q2. Given the high support for the proposal, most comments elaborated on the potential benefits of introducing the change; typically that a new provision would act as a deterrent, improve compliance and offer more options to local authorities and owners. Several organisations, including both those who agreed with the proposal and those who neither agreed nor disagreed, raised additional points for the Scottish Government to consider, particularly the need for flexibility in applying the provision.

A new provision helps compliance

Many agreed with the proposal to include a new provision for the removal of work on the basis this would deter unauthorised work, encourage better quality buildings, and strengthen enforcement measures.

“In principle, we agree that works that do not comply with the appropriate standards should be removed or modified and that local authorities have discretion to do so. We believe this will help to discourage malpractice and facilitate the rectification of unsafe work.” –
Professional/membership body

Respondents reflected that the provision would discourage unauthorised works and encourage compliance with building standards if this new provision was enforced by local authorities. A professional/membership body noted that it is not always possible to retrofit or alter works once a building has been constructed, so removing work may be the only way to comply with regulations. One local authority felt the provision aligned with the findings of the independent [Inquiry into the Construction of Edinburgh Schools](#) and the broader consultation proposals. Three respondents stated that the proposal provided clarity and sent a clear message to deter non-compliance.

Provides greater flexibility and choice

A provision to remove non-compliant work was welcomed by many, who argued this would offer greater flexibility or choice in the options available to local authorities and owners. Greater choice would, therefore, allow parties to agree on the most suitable course of action depending on the circumstances of each building. For example, one local authority noted that an owner might prefer to return a building to its previous condition once they appreciate the scale of work required to comply with building standards. In their view, the capacity to provide a notice that recognises that work has been carried out but returned to its original state would be beneficial in these situations.

Other considerations

Several organisations raised other points to consider. The need for flexibility in applying the provision was requested by some. For instance, two organisations called for constructive discussion with the owner or all relevant parties to achieve a satisfactory resolution. One of these organisations – a professional/membership body – cautioned that local authorities should not be allowed to issue removal of work notices as a quick, default response instead of encouraging constructive dialogue.

One commercial organisation requested ‘reasonableness of response’ that determined the seriousness of the non-compliant work, with flexibility applied to obtain a satisfactory solution. A commercial organisation noted that the potential for the provision to be misapplied, arguing for checks and balances and for proposed removals to be referred to the appropriate enforcement authorities.

Other points raised

Two organisations raised concerns about the potential cost to local authorities of removing non-compliant work if the owner did not do so, or that local authorities may not use these

powers if they did not have the funds available to remedy work. The cost of providing resources and training to enforce regulations was raised by another organisation.

“In cases where substantial works have been carried out, and a notice is not complied with, this could place a significant financial burden on the local authority. In all cases, Section 27 powers are discretionary, and the LA may decide not to carry out the works required to regularise a situation under the terms of a notice.” – Local Authority

Points each raised by one respondent included:

- A commercial organisation questioned whether giving the option to remove work and “simply put works back the way they were” sent out a strong enough signal to owners that they must comply with their legal obligations.
- An individual called for professionals such as architects or surveyors engaging in non-compliant work to be automatically referred to their professional bodies and struck off for repeat offences.
- Conversely, one local authority noted that as well as amending the notice, local authorities need to have the ability to remove the work to ensure compliance.

“The question asked is in the context of allowing for the removal of the work within the notice itself. It is important that this provision is also available to the LA [Local Authority] under S27 (7)(b) of the 2003 Act. In other words, the removal option may be cited in both the notice served on the relevant person, but the LA may also remove the work rather than the current provisions where the LA must make the work comply with the building regulations.” – Local Authority

4. Section 27 - Stopping work

Section 27 also gives local authorities powers to suspend work (stop work). Q3 of the consultation asked respondents for their views on a new provision for a standalone “Stop notice” that would enable the local authority to have work “stopped” until the owner/developer gained consent to continue. This step is intended to be a more effective deterrent by sending a stronger message to those involved that there are consequences to their actions and would provide helpful evidence should the local authority be required to take formal action, including prosecution.

Q3 - Do you agree that the provision of a standalone stop notice under section 27 would act as a helpful deterrent?

	Strongly agree	Agree	Neither	Disagree	Strongly disagree	No answer
No. of all respondents (43)	23	14	4	1	0	1
% of all respondents (43)	53	33	9	2	0	2
% of individuals (18)	56	33	11	0	0	0
% of organisations (25)	52	32	8	4	0	4
- Local Authority (15)	60	27	7	7	0	0
- Professional assoc. / membership org (7)	43	43	0	0	0	14
- Commercial org / manufacturer (3)	33	33	33	0	0	0

High levels of total agreement with this proposal were recorded among all respondents (86%), individuals (89%) and organisations (84%), with over half of each audience strongly agreeing and one third agreeing. The level of agreement varied by type of organisation, with 60% of local authorities strongly agreeing compared to 43% of professional associations and 33% of commercial organisations.

Two thirds of respondents left a comment in Q3; all but three agreed with the proposal in the closed question. These comments explained the basis of their support for the proposal, noting it was a clear deterrent. While there was widespread agreement, several respondents, including individuals and all types of organisations, argued that appropriate measures are needed to ensure a stop notice is enforced.

Only one organisation - a local authority – expressed disagreement with the proposal in the closed question. They commented that the consultation paper did not explain why a standalone stop notice would be a more useful deterrent, and felt it was more effective to serve one combined notice that required works to stop and to apply for a building warrant. They also queried whether a separate stop notice would take effect immediately, suggesting this would be more helpful than it taking effect after 28 days as currently under section 27(2).

A stop notice would be a clear deterrent

The most prevalent theme in comments of support for the proposal was that a standalone stop notice would send a clear and compelling message that compliance would be enforced. A few felt a stop notice would be more effective than notices to suspend works or a statement in an enforcement notice. A professional/membership body thought it would be a helpful deterrent, particularly where issues are recorded, publicly available and communicated to regulators. One local authority agreed but suggested that the implementation of the new approach should be kept simple to allow it to be used quickly and easily when needed.

Several endorsed a standalone stop notice but provided little additional information about why. Two professional/membership bodies felt this would align Scotland with elsewhere in the UK and contribute to cultural change in the industry, which would result in safer buildings over time. A local authority echoed this view.

“By stopping work, local authorities can ensure that corrective measures are implemented promptly and comprehensively, thereby enhancing public safety and the integrity of the built environment...A standalone stop notice under section 27 would... enhance the effectiveness of enforcement measures and promote responsible ownership and management of buildings in [this area] and beyond.” – Local Authority

“Agree with this in two scenarios. Firstly when alternate products may have been used that have not been checked as compatible with other materials as a result of something such as value engineering. Secondly, in a situation as per the Building Safety Regulator in England where the authority is not notified of what is termed a notifiable change from the original warrant.” - Professional/membership body

Reinforcement

Enforcement, including proportionate penalties such as fines, would be required to back up the stop notice, according to several respondents. In isolation, legislation was not considered a deterrent. One professional/membership body cautioned that without sufficient resources to identify non-compliance and then inspect to ensure the stop notice is adhered to, there was a risk that non-compliant owners would consider the likelihood of being handed a notice so low that it would not be a deterrent. One local authority felt that existing legislation had been ineffective, combined with a reluctance to pursue enforcement other than initial verbal or written warnings.

Need for additional resources

Three respondents noted the additional cost that could be placed on local authorities, which they felt could strain existing resources and processes. This included the burden on council services if enforcement is ignored and the additional costs required for monitoring, enforcement, and compliance verification.

“It is important that sufficient resources are made available, including the ability to identify such premises and then determine where they need to be ‘stopped’. Sufficient competent staff with the resources available to undertake meaningful action will help add an additional safety net to the building safety regime.” – Professional/membership body

Other points raised

Two respondents felt existing powers were sufficient, with one commercial organisation querying how many actions to suspend works had been issued by local authorities under Section 27, implying this proposal was not required.

A further two organisations noted that stopping works could have consequences for commercial organisations. One suggested penalties for not stopping might be less severe than penalties for missed completion dates and would, therefore, not act as a deterrent, as the developer could be willing to continue working and accept the fine.

One local authority requested clarity on who would be served the notice:

“It would be good to clarify if the notice would be served on the owner and developer/builder or just the owner/developer or the builder. Verifiers often encounter instances of enabling works that are actually commencement of works, and owners and builders blaming each other for either instructing the work to commence early or builders starting early as it suits them, and there is no impact on them. It would be welcome to have clarity on this so that it can be highlighted throughout the application process and customer journey.” – Local Authority

5. Section 27 - Taking action after acceptance of the completion certificate

The provisions under section 27 may be used by local authorities to address work not in accordance with the building warrant and building regulations once the verifier has accepted the completion certificate. A few local authorities, out of 32, have utilised this power, albeit on an infrequent basis. However, most local authorities are reluctant to use it for cases after the acceptance of the completion certificate as they do not think the scope is set out clearly in the Act.

To ensure that the legislation is clear, and to reflect the introduction of the Compliance Plan approach for High Risk Buildings (HRBs), the proposals include clarifying the powers under section 27 to ensure local authorities have the option to take action on HRBs after the acceptance of the completion certificate. The clarification of the use of section 27 would allow local authorities to consider the use of this enforcement power at their discretion.

Q4 - Do you agree with enforcement after the acceptance of a completion certificate for High Risk Buildings?

	Strongly agree	Agree	Neither	Disagree	Strongly disagree	No answer
No. of all respondents (43)	13	16	7	5	1	1
% of all respondents (43)	30	37	16	12	2	2
% of individuals (18)	39	39	11	11	0	0
% of organisations (25)	24	36	20	12	4	4
- Local Authority (15)	27	33	20	13	7	0
- Professional assoc. / membership org (7)	14	43	14	14	0	14
- Commercial org / manufacturer (3)	33	33	33	0	0	0

Overall, two thirds (67%) of respondents supported this proposal to some extent; 30% strongly agreed and 37% agreed. However, 14% of respondents disagreed with the proposal. Support was higher among individuals than organisations - 78% of individuals agreed, with 39% strongly agreeing, compared to 60% total agreement and 24% strongly agreeing among organisations. Both individuals, local authorities and professional associations expressed some disagreement.

Over three fifths of respondents left an open comment in response to Q4, with the views expressed typically in line with the levels of support and opposition recorded in the closed question. The most prevalent theme was general agreement with the proposal because of a perceived need to take enforcement action, with some advocating this should be extended beyond HRBs. While a majority agreed with the proposal, many open comments

asked for further detail, or highlighted reservations. For example, some sought greater clarification on how the proposal would work in practice, or raised concerns such as the potential impact on verifiers' resources. Not all comments addressed HRBs specifically, so was unclear if their view was about HRBs or enforcement action more generally.

Rationale for agreement with enforcement action

The most prevalent theme raised by many, half of whom were local authorities, was an agreement that enforcement after the acceptance of a completion certificate could be required, for High Risk Buildings in particular. One local authority noted that this proposal would align Scotland with the Building Safety Act 2022 in England. A professional/membership body argued that the proposal could be important in the short term as new building safety regulations are introduced. They suggested it may be necessary to revisit buildings that have received a completion certificate if there are regulations or risks that have not been understood or assessed at the time of completion.

"I believe that the impact from non-compliance in a HRB is greater than in other buildings so agree generally that there should be clarification on the process available to use if the verifier deems fit to follow through." – Local authority

Some, including organisations that either agreed or disagreed with the proposal, did so because they felt the proposal should apply to all buildings, not just High Risk Buildings. One local authority expressed a view that action was more likely to be required for newly built multi-plot housing.

"Why does this only apply to HRBs? Is it OK to falsely obtain a completion certificate on a low risk building? What message does this send to developers?" - Individual

Clarification on how it will apply

Some local authorities, including a mix of those who agreed, disagreed or were neutral about the proposal, sought further clarification on issues such as:

- The definition of reasonable enquiry and the specific circumstances where enforcement can be pursued.
- How could the provision be introduced in a way that it applied to only certain building types?
- How and on whom would action need to be taken, e.g. could the verifier rather than the contractor be at fault?
- If a building has been purchased from a developer, would the developer or the new owner be responsible for compliance after the acceptance of a completion certificate?
- Who would be responsible if the main contractor is no longer operating?
- Whether particular areas of compliance will be focused on, e.g. life/fire safety, structural safety rather than drainage issues, air tightness, foundation failure, etc.

One organisation disagreed with the proposal and stressed the need to clarify and communicate the discretionary nature of the provisions:

Section 27 is a discretionary power and is unlikely to result in the Local Authority physically undertaking work should the relevant person fail to act on any issues found. The discretionary nature of section 27 must be highlighted should an extended use of section 27 be outlined in the future. [We] note that the BSD do not necessarily see the level and type of enforcement activity by the Local Authority significantly changing should clarification be provided. This position may not be shared or understood by the general public resulting in a significant resource being taken up to explain the limitations of section 27.” – Local Authority

Need for improved inspection and verification

Some respondents, including a mix of those who agreed, disagreed or were neutral about the proposal, voiced concern that this new measure could mean the existing inspections to achieve a completion certificate are not detailed enough to uncover hidden compliance issues. They gave the specific example of ‘firestopping of services to reinstate compartmentation’. Respondents suggested more regular inspections should be made as a building progresses to ensure compliance, particularly for HRBs. One organisation noted that building control officers are not onsite as regularly as they used to be, which increases the potential for issues to arise after the completion certificate has been accepted.

Other points raised

- Several raised concerns about funding, reiterating concerns about the additional cost and resources that could be placed on local authorities, in particular, to undertake further inspection and monitoring.
- Three felt the proposal might not lead to the non-compliance being resolved, while one professional/membership body suggested that additional reliance on retrospective investigations could lead to less emphasis being placed on compliance prior to the acceptance of a completion certificate.
- Two organisations who disagreed with the proposal suggested that issues arising after the acceptance of a completion certificate should be dealt with between the relevant parties in line with the conditions of their agreed contract.
- Two organisations suggested existing powers within the Act should suffice, and a local authority that disagreed with the proposal called for better guidance around how the existing section 27 provisions could be used.

6. Section 27 - Introduction of a time limit

The current power under section 27 of the Act does not contain a time limit for local authorities to take action on all work subject to a building warrant and building regulations. The consultation proposes introducing a 10-year time limit for serving notices. This chapter presents the analysis of responses to Q5, Q6 and Q7, which addressed this proposal.

Q5 - Do you agree that the introduction of a time limit is necessary?

	Yes	No	No answer
No. of all respondents (43)	30	10	3
% of all respondents (43)	70	23	7
% of individuals (18)	67	33	0
% of organisations (25)	72	16	12
- Local Authority (15)	80	20	0
- Professional assoc. / membership org (7)	57	14	29
- Commercial org / manufacturer (3)	67	0	33

A majority of all types of respondents agreed with introducing a time limit. Seven in ten (70%) agreed overall, with similar levels recorded by both individuals (67%) and organisations (72%). Support was highest among local authorities (80%).

Q6 - Do you agree with the introduction of a 10-year time limit for taking action on non-compliant work?

	Yes	No	No answer
No. of all respondents (43)	20	20	3
% of all respondents (43)	47	47	7
% of individuals (18)	44	56	0
% of organisations (25)	48	40	12
- Local Authority (15)	53	47	0
- Professional assoc. / membership org (7)	29	29	43
- Commercial org / manufacturer (3)	67	33	0

Mixed views were expressed on the introduction of a 10-year time limit. Overall, just under half (47%) were in favour, a further 47% opposed, and 7% did not answer. Individuals were more likely to be opposed than in favour (56% compared to 44% respectively). Conversely, 48% of organisations were in favour and 40% were opposed. While support was lower among professional associations (29%), they were also least likely to oppose the proposal (29%), with the remaining 43% not answering.

Q7 - Do you have any views on the 10-year time limit proposed?

Almost three quarters of respondents left an open response in Q7, providing comments both for and against the introduction of (i) a time limit and (ii) the proposed 10-year limit.

Just under half of respondents agreed with both proposals. Among this group, most left brief comments reiterating their agreement; some reflected on the opportunity to introduce greater alignment and consistency across local authorities and the UK.

One quarter agreed with the introduction of a time limit, but not with the 10-year proposal, primarily arguing that this is too long. Conversely, one quarter disagreed with both proposals; these respondents called for longer limits, or the absence of a time limit for taking action.

Rationale for agreement among those who expressed support for the time limit

Several of those who supported the proposed 10-year limit left brief comments reiterating their support. For example, one argued that a 10-year limit would incentivise all parties to take a 'right first time' approach to meeting building standards requirements, and provide certainty that no further steps would be taken by a verifier after a period of time during which it has been established that a building has been built correctly.

Some argued that a time limit could enhance consistency and continuity across the UK. However, one professional/membership body highlighted a potential inconsistency with the Building Safety Act, which they claimed had a time limit of "30 years retrospectively for claims accruing before 28 June 2022 and to 15 years for claims accruing after 28 June 2022".

Two individuals agreed with a 10-year time limit, noting this would ensure a consistent approach across local authorities. Another organisation suggested alignment with other regulations:

"We agree the time limit should be at least ten years as proposed. However, for greater local consistency, it may be worth consideration of alignment to other statutory periods, such as those within section 7 of the Prescription and Limitation (Scotland) Act 1973 (which is twenty years)." - Professional/membership body

Rationale for disagreement with the proposed time limit for taking action

Several respondents, including three local authorities, agreed with a time limit but disagreed with the proposed 10-year limit on the basis this was too long. Among those who suggested an alternative, one local authority felt that most non-compliance issues would become apparent within five years, and two individuals felt the limit should be six months, followed by court action.

"Whilst a time limit would give more certainty for building owners and local authorities as to when notices can be served, 10 years is a significantly long period for local authorities to revisit work." – Professional/membership body

Several respondents, primarily individuals, argued that there should either be a longer time limit or no end date to being able to take action on non-compliance if a risk to life or serious breaches affecting the safety and integrity of the building arose at any point in the life of the building.

Three respondents felt a 10-year limit was insufficient on the basis that it could take longer to identify non-compliance, by which time, the issue may have been passed on to subsequent buyers. A local authority suggested a 20-year limit could deter builders from non-compliance in the hope they could pass on the problem. Similarly, one professional/membership body noted that the limited resources of verifiers could mean that it takes time for non-compliance to come to the attention of a local authority. They argued that it would be inappropriate for a non-compliant building to 'slip the net' because it takes longer than the time limit for issues to come to verifiers' attention.

“The problem with a time limit is that malpractice will only be discovered when there is reason to investigate parts of the building. There are likely to be few, if any, reasons to investigate a building within 10 years of its completion. Failures and developing problems are likely to become apparent over a long period of time or after a disaster such as Grenfell. There is no rationale to limit the window for action to just 10 years, particularly when owners of flats expect their property to last for more than 100 years.” – Individual

Two organisations about the proposal urged the Scottish Government to ensure that the time limit, if introduced, does not negatively impact when verifiers can take action.

“The Building Act 1984 had a time bar of 12 months for section 36 notices, and this has been extended to 10 years. However, the B(S)Act does not appear to cite any such time bar. That being the case it may be beneficial not to introduce the 10-year time constraint and leave LAs' open to take enforcement at any point after the unauthorised work has been completed.” – Local Authority

“Currently, there is no time limit on the action that can be carried out by local authorities. However, the consultation seems to suggest that the lack of a time limit may actually be the cause of inaction due to them being “reluctant to use it for cases after the acceptance of the completion certificate as they do not think the scope is set out clearly in the Act”. As such, care needs to be taken to ensure that introducing any kind of time limit equates to a lessening of existing standards. Whereas in England the ten-year time limit represented an increase in the local authority powers, in Scotland this may be a lessening.” - Professional/membership body

Other points raised

Resource concerns were raised by three local authorities. One highlighted potential negative consequences such as limitations on enforcement flexibility, impact on complex cases, administrative burden, and legal and procedural implications. These responses argued that while the guidance is aimed at High Risk Buildings, owners of smaller buildings could attempt to use the process to rectify minor defects, absorbing a significant amount of verifiers' time.

Two local authorities noted that other forms of redress, such as civil action, were available. For example, one suggested that a building owner could take action against a developer outside of a 10-year limit.

Singular considerations raised by organisations included:

- The challenge of establishing, over time, whether an issue is a defect due to the original construction or maintenance or amendment carried out at some point during the time limit. This respondent argued it could lead to multiple issues, including the value of the property being affected, insurance being invalidated, and owners being unable to sell their property until the defects were rectified.
- Clarification over who takes responsibility if a party involved in the original design and construction has ceased trading during the time limit.
- The potential higher costs for building owners if developers have increased insurance liabilities to ensure they are fully compliant and able to take remedial action over a longer period of time.

7. Section 48 - Penalties for offences

Chapter 7 reviews the proposed changes to section 48. This section outlines the penalties for offences applicable to work that does not meet building regulations, including offences by building owners, verifiers and certifiers of design and construction. The Scottish Government is seeking to increase the penalties for offences under section 48 for those involved with High Risk Buildings, to align the penalties with those applicable in England and Wales and provide the courts with flexibility in deciding fines. The proposed amendments are increasing the level of a fine to a maximum of £50,000, introducing a maximum two-year custodial sentence, and providing an option for a fine or custodial sentence.

Q8 - Do you agree with the level of fines proposed?

	Yes	No	No answer
No. of all respondents (43)	34	8	1
% of all respondents (43)	79	19	2
% of individuals (18)	72	28	0
% of organisations (25)	84	12	4
- Local Authority (15)	93	7	0
- Professional assoc. / membership org (7)	71	14	14
- Commercial org / manufacturer (3)	67	33	0

There was widespread support for the level of fines proposed. Overall, 79% were in favour, with 72% of individuals and 84% of organisations agreeing. All organisation types agreed, ranging from 93% of local authorities to 67% of commercial organisations.

Open comments on the proposal were provided by three fifths of respondents, and these typically reflected the widespread support recorded in the closed question. While many of these comments were expressions of general support, several respondents called for penalties proportionate to the type of work or non-compliance in question. Some who expressed opposition in the closed question suggested in their open comment that they supported financial penalties but felt the proposed level of fines was too low to act as a deterrent.

Agreement with the proposal

The most prevalent theme in open comments was general statements of support for the proposed changes. Over half of those who agreed were responding from a local authority. They suggested that the fines for High Risk Buildings are currently too low, disproportionate to the offence which can often put the public at risk, and do not act as a deterrent.

Some respondents noted that they agreed with the proposal because it would align the regulations in England, Wales and Scotland, which they felt would increase clarity.

“The level of fines proposed appears consistent with the nature of the works being carried out. The newer fines system also allows for recognition of the risk some buildings represent to both builders and occupiers. Whilst not wanting anyone to be fined or jailed, the knowledge of more severe punishments for those involved in the building system should result in closer auditing and control over the works being carried out.” – Local Authority

Proportionate to the type of work

The second most common view, expressed by a mix of respondents who agreed and disagreed with the closed question, was that penalties should be scalable or proportionate to the work or non-compliance in question.

Some who raised this point agreed with the level of fines proposed in the closed question, noting that the proposed scale provided flexibility for a more severe fine based on the type of building development. An individual suggested that it should also relate to the property's value, i.e. the rateable value or the council tax bands.

In contrast, some others expressed support for scalable penalties but disagreed with the closed question as they thought £50,000 was too low to deter larger building projects from not meeting standards. An individual elaborated that larger developers should be subject to a higher fine, as the proposed maximum of £50,000 would be cheaper than employing a professional to oversee the quality of work on major developments i.e. they would rather incur a fine than take measures to ensure compliance.

Larger penalties

Some respondents disagreed with the closed question and advocated for larger penalties in their open comments. There were calls for higher maximum fines as respondents believed £50,000 was insufficient to deter non-compliance. Others suggested an unlimited fine.

One organisation left a detailed response which recommended that the outcome of the penalty should affect a developer's ability to work on simultaneous or future projects.

“[We] believe that the level of fines introduced should act as an appropriate deterrent to ensure developers construct buildings in accordance with the Building Regulations. While it is for the Scottish government to determine an appropriate level of fine, some developers and owners will not consider a £50,000 fine to be a significant deterrent. In England, the fines form part of a wider set of deterrents, such as the ‘Responsible Actor’s’ scheme, and the developer’s pledge, which go towards encouraging better behaviour in the sector. The Responsible Actors Scheme in England means that offenders may be prevented from undertaking other works through either planning or building control until they have fixed the issues that have been found. While the implementation in England is not quite the same, the principle would be familiar to those developers who work across the border. This could also be extended not just to developers but owners as well. This would create three levels of sanctions and may offer the courts a higher degree of proportionality and as such support compliance.” – Professional/membership body

Other points raised

Two organisations agreed but urged for consideration of the impact of larger penalties on the commercial viability of projects, with increased insurance costs and more risk assessments needed for more complex projects.

An individual thought the penalty should be decided by a local authority rather than the courts, as they were concerned cases may be dismissed from court and penalties not collected. In contrast, an individual reiterated support for the court's power to decide on the level of penalty.

Other singular comments made by organisations included:

- Extending the penalties to include breaches of individual requirements imposed by local authorities, for example, non-compliance with stop notices.
- Introducing an inspection regime to help, educate and encourage builders may be more effective.
- Introducing a daily fine for owners who fail to meet the requirements of any notice.
- An organisation that disagreed with the proposals as they felt it would not solve current problems around planning.
- One disagreed that verifiers should be subject to the same penalty as those with primary responsibilities, such as the building owner or relevant person, and suggested that fines for verifiers remain at the current level. Conversely, a local authority argued that all parties involved in the process should be considered, including architects, designers, fire engineers, structural engineers, contractors, sub-contractors, and verifiers.

Q9 - Do you agree with the option to include a custodial sentence?

	Yes	No	No answer
No. of all respondents (43)	38	4	1
% of all respondents (43)	88	9	2
% of individuals (18)	89	11	0
% of organisations (25)	88	8	4
- Local Authority (15)	93	7	0
- Professional assoc. / membership org (7)	86	0	14
- Commercial org / manufacturer (3)	67	33	0

Very high levels of support were recorded for the option to include a custodial sentence. Overall, almost nine in ten (88%) of respondents agreed, with the same high agreement recorded by both individuals (89%) and organisations (88%). All types of organisations agreed, ranging from 93% of local authorities to 67% of commercial organisations.

Just over half of respondents provided an open answer in Q9. As with Q8, the high levels of support recorded in the closed question were reflected in open comments. The two most prevalent themes were general support for including a custodial sentence, and calls for the use of a custodial sentence to be proportionate to the seriousness of non-compliance. Only three respondents who disagreed with the closed question left open comments, arguing that a financial penalty and existing legislation are sufficient or expressing concern about the impact on verifiers; this latter point was also noted by a small number who supported the proposal.

Agreement with the proposal

One of the most prevalent themes was agreement with the proposal. A small number agreed without giving further information. Some others believed including a custodial sentence would provide a suitable deterrent to non-compliance, would be a useful and potentially stronger deterrent than financial penalties, and reinforce the seriousness of non-compliance. A few respondents caveated their agreement with specific points:

- An individual noted that the penalties would need to be acted upon by local authorities and the court system to be effective.
- A professional/membership body sought more information on what actions would justify a custodial sentence.
- Another professional/membership body requested clear guidance on who is culpable i.e., the occupant, developer, landlord or agent.

Proportionate penalties

Another equally prevalent theme was agreement with the proposal if the maximum penalty was proportionate to the level or nature of non-compliance. Many suggested a custodial sentence would be most appropriate, or should be kept for, the most severe offences that put building users at risk or for repeat offenders. An individual argued that anyone up to the chief executive of an organisation could be liable for a custodial sentence if they did not put compliance at the forefront of their company's actions.

“Custodial offence is in extremis and should be kept for flagrant abuses and refusals to comply. It should be the end of a process that seeks rectification, and that process is met with intransigence, where there has been gross negligence or where there is evidence of repeated flouting of Building Standards.” – Commercial organisation

Capacity and training of verifiers

Concern was expressed by two who agreed and one who disagreed with the closed question about verifiers' capacity and training to help implement the proposal in practice. These respondents argued that verifiers do not currently have the skills to collect and present the level of detailed evidence required to pursue a custodial sentence. Another individual suggested that, without training, the proposed penalties would be ineffective.

“This type of court action on the Planning side has been shown to be ineffective, due to a lack of training. The type of training with Police Scotland, which LABSS have developed, would be vital in ensuring this change is effective in practice.” - Individual

There was also a concern expressed by two local authorities that blame could fall on verifiers and that verifiers should not be subjected to a custodial sentence.

One professional/membership body noted that sufficient training and resources must be available to building professionals to ensure that 'any action must be achievable by those who are duty bound to undertake it'.

Other points raised

Other issues raised in comments included:

- A professional body and a commercial organisation noted that legislation, particularly Health and Safety legislation already included penalties of custodial sentences for building failures and that this should be sufficient.
- Two respondents agreed that alignment with the Building Safety Act (2022) in England and Wales was appropriate.
- An individual disagreed with the proposal, stating that the fine is a sufficient deterrent.

8. Impact assessments and other impacts

The consultation included three further questions addressing the potential impact of the proposals on people with protected characteristics, businesses and island communities. The analysis of these three questions, which were answered by a smaller number of respondents, is provided below.

Q10 - Are there any proposals in this consultation which you consider impact or have implications on people with protected characteristics?

	Yes	No	Unsure	No answer
No. of all respondents (43)	5	23	12	3
% of all respondents (43)	12	53	28	7
% of individuals (18)	17	56	22	6
% of organisations (25)	8	52	32	8
- Local Authority (15)	7	67	27	0
- Professional assoc. / membership org (7)	14	0	57	29
- Commercial org / manufacturer (3)	0	100	0	0

A majority of most groups felt that the proposals did not impact people with protected characteristics. Overall, 53% felt they did not, 12% that they did, and 15% were unsure or did not answer. Opinion varied among organisations; while all commercial organisations and 67% of local authorities felt there should be no impact, 86% of professional organisations were unsure or did not answer.

Just over a quarter of respondents provided an open comment in Q10. Most comments were brief, and there was little consistency across the points raised.

The potential implications of the proposals for people with disabilities were highlighted by two respondents. An individual explained that people with disabilities and their carers may require speedy access to adapted accommodation and urged that any amended legislation should not negatively impact these individuals making modest changes to their homes. Similarly, a local authority called for careful consideration of any enforcement action against disabled people.

Two respondents each:

- Highlighted that the proposals could affect mental health or buildings occupied by children, young people, or older adults, but did not indicate whether they thought these impacts would be positive or negative or elaborate further on what these might be.
- Expressed the view that everyone should be treated equally within building standards regulation and in line with any equalities legislation, regardless of protected characteristics.

Other comments in Q10, each mentioned by a single respondent, included that:

- New legislation must make it easier for vulnerable people, and the wider population in general, to hold professionals and companies to account.
- There is a need to ensure those with protected characteristics know what to do and can access complaints procedures in the event of potential non-compliance. It was highlighted, for instance, that not everyone uses a computer.
- None of the proposals will adversely impact people with protected characteristics or mentioned potential positive impacts of the proposals for these groups.
- One commercial organisation suggested that the proposals would have a positive impact:

“We have not identified any proposals in this consultation that we consider will adversely impact individuals with protected characteristics. We believe the effects of the proposals in this consultation - and the recommendations we have made - will positively affect the safety of protected groups, notably building occupants with impaired abilities.” – Commercial organisation

Q11 - Do you think that any of the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)?

	Yes	No	Unsure	No answer
No. of all respondents (43)	23	11	8	1
% of all respondents (43)	53	26	19	2
% of individuals (18)	44	33	22	0
% of organisations (25)	60	20	16	4
- Local Authority (15)	73	13	13	0
- Professional assoc. / membership org (7)	43	14	29	14
- Commercial org / manufacturer (3)	33	67	0	0

Opinions on whether the proposals could impact businesses varied. Overall, 53% felt there could be an impact, 26% did not, and 21% were unsure or did not answer. While 44% of individuals thought there could be wider implications, this rose to 60% of organisations. Local authorities were notably more likely to believe there would be an impact (73%).

Just over half of all respondents provided an open comment in Q11. The most prevalent theme in open comments was the additional demands that could be placed on staff in the sector, especially within local authorities. A small number highlighted other potential negative impacts on costs, with a few others noting potential positive impacts.

Resource implications

The most prevalent theme outlined by many respondents, particularly local authorities, was that the proposals could place additional demands on resources, staff time, training and workforce planning. Several stated that increased statutory or enforcement responsibilities would be time and resource-consuming, with three expressing a view that these services are already underfunded or stretched. There were several calls for the proposals to be accompanied by increased funding and staff training to ensure their successful delivery and protect against adverse impacts on current workstreams.

“The increased powers will require greater enforcement investigation and processing by verifier teams that are already stretched. This increased duty and expectation will likely impact upon performance figures unless additional resource can be identified, recruited, and trained up within the service.” – Local Authority

Two local authorities reflected on the resource implications for local authorities of pursuing prosecutions. For example, as well as additional demands on verifier teams, support from other teams, such as local authority legal services, would be required.

“If it is the expectation that Local Authority building standards are to be more proactive with enforcement then this will have an impact on resources. Allied to this is the expectation that following enforcement action a prosecution is required the resources required for this are considerable and will impact on the provision of providing an efficient building standards service. Additionally, if the LA is expected to carry out the work and recover the costs of doing so, this could lead to both financial and resource implications.” – Local Authority

The resource implications of the proposal to take action after a competition certificate had been accepted were noted by three respondents.

“The proposal to introduce enforcement after a completion certificate has been accepted would have financial and resource implications for us, even where a complaint is unfounded. Any issue raised would have to be investigated referring to the approved plans and the regulations in force at the time of the warrant. Often any complaints could be dealt with through the construction contracts, but Building Standards may be seen as the easier and cheaper route to take.” – Local Authority

Two professional/membership bodies also highlighted the potential for increased workload due to the proposed changes. One described the resource implications of producing resources about the implementation and impact of new legislation for their members. Another described additional workload for their members due to increased audit and inspection of buildings to better support local authority verifiers, as well as the need to deliver and embed new training.

Negative impact on costs

Two organisations raised the potential negative impact of the proposals on building costs. One warned that insurance costs could rise if work is revisited after acceptance of the completion certificate. A commercial organisation suggested that organisations which plan

to or incur financial penalties may try and recover those costs to the detriment of their customers, either through higher costs or cost-cutting which leads to poorer service.

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

Positive impacts

Three organisations felt that the proposals could have positive implications for their work, or more generally. They suggested that the proposals could lead to a culture change and that, rather than using sub-standard products to get the job done cheaply, there would be a greater emphasis on a right first-time approach which uses better quality products and materials which improve safety and standards. One commercial organisation elaborated on this point by noting that while there may be increased short term costs to implement the changes, this would be negated by reduced maintenance costs in the long term.

Q12 - Do you think that any of the proposals in this consultation have any impact or implications on island communities?

	Yes	No	Unsure	No answer
No. of all respondents (43)	5	14	21	3
% of all respondents (43)	12	33	49	7
% of individuals (18)	11	50	39	0
% of organisations (25)	12	20	56	12
- Local Authority (15)	0	20	73	7
- Professional assoc. / membership org (7)	29	0	43	29
- Commercial org / manufacturer (3)	33	67	0	0

Most respondents were unsure about the implications for island communities (49%) or did not answer (7%). Just over one in ten individuals (11%) and organisations (12%) thought there could be an impact, though organisations were more likely to say they were unsure or not answer (68%).

One in five respondents provided a comment at Q12. The most common theme, outlined by three respondents, was that island communities face logistical challenges, possibly making compliance with building standards harder. It was, however, noted that island communities typically have fewer High Risk Buildings.

Examples of some of the challenges included: difficulties accessing materials; limited access to specialist expertise and professionals to carry out building work or inspections; and logistical challenges accessing and inspecting buildings. There were calls to take

these logistical challenges, and the Islands (Scotland) Act 2018, into account in future legislation. One professional/membership body advocated for island authorities to have sufficient expertise and power to determine whether non-compliance with regulations is due to negligence, or due to difficulties arising from the remoteness of the development.

Another professional/membership body cautioned against the potential negative impact on investments in island communities should the proposals lead to delays.

“If the regulatory framework does not cause delays, then we do not see it causing a problem. If, however, there are significant hold points, it could be more costly and impactful to a project deemed higher risk within an island community and prevent the investment.” – Professional/membership body

Conversely, one commercial organisation highlighted the potential positive impacts of the proposed changes, as it should mean that buildings are constructed with the level of resilience they need to withstand the more challenging island environment.

9. Conclusions

Many individuals and organisations with detailed knowledge took part in the consultation, sharing their views on the proposals to strengthen the existing enforcement powers of local authorities and change the penalties for building standards offences. Reflecting on their experience and perspectives, this report provides a high-level summary of the consultation responses. For more detail, readers are encouraged to look to individual responses where permission was given for publication³.

Overall, there was broad support for the proposals. Respondents typically agreed that the proposals provide a clearer, stronger deterrent that should help to improve compliance, enable more effective enforcement and ensure building safety. The proposals were also seen as offering greater flexibility to relevant parties and helping to align Scotland with other parts of the UK.

Nine in ten respondents agreed with the proposal to hold owners accountable for new/converted buildings which are occupied illegally (section 21), and between two thirds to over four fifths of respondents supported a new provision for the removal of work, a standalone stop notice, and the ability to take enforcement action after the acceptance of a completion certificate for High Risk Buildings (section 27).

Views were more mixed on introducing a time limit for local authorities to take action on all work subject to a building warrant and building regulations (section 27). While seven in ten agreed with the introduction of a time limit, just under half favoured the proposed 10-year limit. Other respondents either felt a 10-year limit was too long, or that there should be no end date to being able to take action on non-compliance.

Very high levels of support were noted for increasing the level of a fine to a maximum of £50,000 and the option to include a custodial sentence (section 48). However, many caveated their agreement by noting the need to ensure penalties are proportionate to the level or nature of non-compliance.

While perceived impacts of the proposals were generally limited, there was concern from many respondents, particularly local authorities, that the proposals could put additional pressure on the time and resources of local authorities and their verifier teams. Across the consultation, some organisations noted additional costs and risks which builders and developers could face. There were also calls for the Scottish Government to provide further guidance and clarification about how the provisions could be used in different scenarios, and to consider how the provisions would work alongside existing legislation.

The findings from this analysis will now be used by the Scottish Government to continue discussions with key stakeholders and to help finalise the proposals.

³ Responses are published on the [Scottish Government's consultation website](#)

Appendix A: Quantitative Analysis

This appendix provides a detailed breakdown of the 11 quantitative closed questions included in the consultation.

The tables for each question show:

- The number of respondents from the total sample of 43 respondents who selected each response, and the corresponding percentage.
- The percentage response recorded by individuals and organisations, and a breakdown by type of organisation.

Please note that the row percentages may not add to 100% due to rounding.

Sectoral Classification

	Number of respondents	% of total sample
Individuals	18	42
Organisations	25	58
Local authorities	15	35
Professional association / membership organisation	7	16
Commercial organisation / manufacturer	3	7

Q1 - Do you agree with the inclusion of holding owners accountable for new/converted buildings which are occupied illegally?

	Strongly agree	Agree	Neither	Disagree	Strongly disagree	No answer
No. of all respondents (43)	26	13	2	1	0	1
% of all respondents (43)	60	30	5	2	0	2
% of individuals (18)	56	28	6	6	0	6
% of organisations (25)	64	32	4	0	0	0
- Local Authority (15)	80	20	0	0	0	0
- Professional assoc. / membership org (7)	43	57	0	0	0	0
- Commercial org / manufacturer (3)	33	33	33	0	0	0

Q2 - Do you agree with the proposal to include a new provision for the removal of work on the section 27 Building Warrant Enforcement Notice?

	Strongly agree	Agree	Neither	Disagree	Strongly disagree	No answer
No. of all respondents (43)	23	13	6	0	0	1
% of all respondents (43)	53	30	14	0	0	2
% of individuals (18)	56	22	22	0	0	0
% of organisations (25)	52	36	8	0	0	4
- Local Authority (15)	67	33	0	0	0	0
- Professional assoc. / membership org (7)	43	43	0	0	0	14
- Commercial org / manufacturer (3)	0	33	67	0	0	0

Q3 - Do you agree that the provision of a standalone stop notice under section 27 would act as a helpful deterrent?

	Strongly agree	Agree	Neither	Disagree	Strongly disagree	No answer
No. of all respondents (43)	23	14	4	1	0	1
% of all respondents (43)	53	33	9	2	0	2
% of individuals (18)	56	33	11	0	0	0
% of organisations (25)	52	32	8	4	0	4
- Local Authority (15)	60	27	7	7	0	0
- Professional assoc. / membership org (7)	43	43	0	0	0	14
- Commercial org / manufacturer (3)	33	33	33	0	0	0

Q4 - Do you agree with enforcement after the acceptance of a completion certificate for High Risk Buildings?

	Strongly agree	Agree	Neither	Disagree	Strongly disagree	No answer
No. of all respondents (43)	13	16	7	5	1	1
% of all respondents (43)	30	37	16	12	2	2
% of individuals (18)	39	39	11	11	0	0
% of organisations (25)	24	36	20	12	4	4
- Local Authority (15)	27	33	20	13	7	0
- Professional assoc. / membership org (7)	14	43	14	14	0	14
- Commercial org / manufacturer (3)	33	33	33	0	0	0

Q5 - Do you agree that the introduction of a time limit is necessary?

	Yes	No	No answer
No. of all respondents (43)	30	10	3
% of all respondents (43)	70	23	7
% of individuals (18)	67	33	0
% of organisations (25)	72	16	12
- Local Authority (15)	80	20	0
- Professional assoc. / membership org (7)	57	14	29
- Commercial org / manufacturer (3)	67	0	33

Q6 - Do you agree with the introduction of a 10-year time limit for taking action on non-compliant work?

	Yes	No	No answer
No. of all respondents (43)	20	20	3
% of all respondents (43)	47	47	7
% of individuals (18)	44	56	0
% of organisations (25)	48	40	12
- Local Authority (15)	53	47	0
- Professional assoc. / membership org (7)	29	29	43
- Commercial org / manufacturer (3)	67	33	0

Q8 - Do you agree with the level of fines proposed?

	Yes	No	No answer
No. of all respondents (43)	34	8	1
% of all respondents (43)	79	19	2
% of individuals (18)	72	28	0
% of organisations (25)	84	12	4
- Local Authority (15)	93	7	0
- Professional assoc. / membership org (7)	71	14	14
- Commercial org / manufacturer (3)	67	33	0

Q9 - Do you agree with the option to include a custodial sentence?

	Yes	No	No answer
No. of all respondents (43)	38	4	1
% of all respondents (43)	88	9	2
% of individuals (18)	89	11	0
% of organisations (25)	88	8	4
- Local Authority (15)	93	7	0
- Professional assoc. / membership org (7)	86	0	14
- Commercial org / manufacturer (3)	67	33	0

Q10 - Are there any proposals in this consultation which you consider impact or have implications on people with protected characteristics?

	Yes	No	Unsure	No answer
No. of all respondents (43)	5	23	12	3
% of all respondents (43)	12	53	28	7
% of individuals (18)	17	56	22	6
% of organisations (25)	8	52	32	8
- Local Authority (15)	7	67	27	0
- Professional assoc. / membership org (7)	14	0	57	29
- Commercial org / manufacturer (3)	0	100	0	0

Q11 - Do you think that any of the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)?

	Yes	No	Unsure	No answer
No. of all respondents (43)	23	11	8	1
% of all respondents (43)	53	26	19	2
% of individuals (18)	44	33	22	0
% of organisations (25)	60	20	16	4
- Local Authority (15)	73	13	13	0
- Professional assoc. / membership org (7)	43	14	29	14
- Commercial org / manufacturer (3)	33	67	0	0

Q12 - Do you think that any of the proposals in this consultation have any impact or implications on island communities?

	Yes	No	Unsure	No answer
No. of all respondents (43)	5	14	21	3
% of all respondents (43)	12	33	49	7
% of individuals (18)	11	50	39	0
% of organisations (25)	12	20	56	12
- Local Authority (15)	0	20	73	7
- Professional assoc. / membership org (7)	29	0	43	29
- Commercial org / manufacturer (3)	33	67	0	0

Appendix B: Consultation Questions

Q1 - Do you agree with the inclusion of holding owners accountable for new/converted buildings which are occupied illegally?

Q2 - Do you agree with the proposal to include a new provision for the removal of work on the section 27 Building Warrant Enforcement Notice?

Q3 - Do you agree that the provision of a standalone stop notice under section 27 would act as a helpful deterrent?

Q4 - Do you agree with enforcement after the acceptance of a completion certificate for High Risk Buildings?

Q5 - Do you agree that the introduction of a time limit is necessary?

Q6 - Do you agree with the introduction of a 10-year time limit for taking action on non-compliant work?

Q7 - Do you have any views on the 10-year time limit proposed?

Q8 - Do you agree with the level of fines proposed?

Q9 - Do you agree with the option to include a custodial sentence?

Q10 - Are there any proposals in this consultation which you consider impact or have implications on people with protected characteristics?

Q11 - Do you think that any of the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)?

Q12 - Do you think that any of the proposals in this consultation have any impact or implications on island communities?



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