

Building standards enforcements and sanctions consultation (Scottish Government)

To: All Chief Executives, Main Contacts and APSE Contacts in Scotland. For information only to England, Northern Ireland and Wales

1 Executive summary

The Building standards enforcements and sanctions consultation closes on 15 January 2024, [click here](#) to submit your response. [Click here](#) to read the consultation paper.

Scottish Government have released a consultation on existing provisions within the Scottish building standard system under Section 21 - Occupation or use without completion certificate, Section 27 - Building warrant enforcement notices, and Section 48 - Penalties for offences of the Building (Scotland) Act 2003. The overall aim is to strengthen the existing enforcement powers used by local authorities and to increase existing penalties for offences to act as a deterrent and send a clear message to those fulfilling the roles of a relevant person, building warrant applicant or owner.

The proposals for sections 21, 27 and 48 are outlined in the section below:

Section 21 – Occupation or use without completion certificate

Local authorities wish to amend section 21 to include an offence by the building owner for allowing people who occupy new or converted buildings without a completion certificate or temporary occupation certificate. At present the existing provision only allows local authorities to take action against the people occupying and using the building.

Section 27 – Building warrant enforcement notices

The current wording of Section 27 building warrant enforcement notices does not give local authorities the option or flexibility to have work removed where this is considered the most appropriate response. Introducing a new provision to remove, for example, any work done without a building warrant or not done in accordance with building regulations, would allow local authorities more powers to remedy situations with building owners. Local authorities also feel that

a standalone “stop notice” would send a more effective message than the existing powers to suspend work. A standalone stop notice would allow local authorities to have work stopped until consent has been gained by owners and developers to continue works. Local authorities would also like clarity in the legislation that local authorities are still able to take action after the acceptance of the completion certificate. They also wish to introduce a time limit for local authorities to take action on all works subject to a building warrant and building regulations, as there is currently no set limit; the new limit is proposed to be 10 years.

Section 48 – Penalties for offences

The current level of fine at the statutory maximum at level 5 (£5,000 to £10,000) is considered fit for purpose for low-risk projects, but these are not considered proportionate for the offence committed for larger and more complex projects. After considering penalties and offences in similar legislation, they have proposed a maximum penalty of £50,000 and a maximum two-year prison term. This would bring Scotland into alignment with the Building Safety Act 2022 and Building Act 1984 which also include a two-year prison sentence.

2 Consultation questions

1. Do you agree with the inclusion of holding owners accountable for new/converted buildings which are occupied illegally?
2. Do you agree with the proposal to include a new provision for the removal of work on the section 27 Building Warrant Enforcement Notice?
3. Do you agree that the provision of a standalone stop notice under section 27 would act as a helpful deterrent?
4. Do you agree with enforcement after the acceptance of a completion certificate for High Risk Buildings?
5. Do you agree that the introduction of a time limit is necessary?
6. Do you agree with the introduction of a 10-year time limit for taking action on non-compliant work?
7. Do you have any views on the 10-year time limit proposed?
8. Do you agree with the level of fines proposed?
9. Do you agree with the option to include a custodial sentence?
10. Are there any proposals in this consultation which you consider impact or have implications on people with protected characteristics?
11. Do you think that any of the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)?
12. Do you think that any of the proposals in this consultation have any impact or implications on island communities?

3 APSE Comment

APSE encourages our Scottish building and housing members to respond to this consultation by 15 January 2024 and acknowledges the work of the Ministerial Working Group in reviewing building and fire safety regulatory frameworks following the tragic Grenfell Tower fire in 2017. APSE supports the strengthening of powers and the added flexibility for local authorities in dealing with the enforcement of building standards. APSE would welcome copies of any APSE member council responses to inform APSE's own response to the consultation. Please email any copies you are happy to share to Garry Lee on glee@apse.org.uk.

APSE encourages our Scottish members to attend the [APSE Scotland Housing, Construction and Building Maintenance advisory group](#) where a great deal of local authority best practice is shared and discussions take place on housing, construction and building issues. APSE has a range of research publications on local authority housing available on [our website](#).

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