

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

SCOTTISH GOVERNMENT CONSULTATION - BUILDING REGULATIONS: COMPLIANCE AND ENFORCEMENT

REPORT BY HEAD OF PLANNING, ECONOMIC DEVELOPMENT AND REGENERATION

A. PURPOSE OF REPORT

The purpose of the report is to advise Council Executive of the Scottish Government Consultation – Building Regulations – Compliance and Enforcement and to consider the proposed response.

B. RECOMMENDATION

It is recommended that the Council Executive:

1. notes the contents of the Scottish Government Consultation (Appendix 1) and
2. agrees the proposed response (Appendix 1) for submission to the Scottish Government.

C. SUMMARY OF IMPLICATIONS

I	Council Values	Focusing on our customers' needs; being honest, open and accountable; making best use of our resources; and working in partnership.
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	There are no equality, health, SEA or risk assessment issues associated with this report.
III	Implications for Scheme of Delegations to Officers	None.
IV	Impact on performance and performance Indicators	It is noted that research and trialling on a live project is planned to identify the increased workload that will result from mandatory notifications and administering the Compliance Plan procedures so that verifiers can anticipate and plan ahead for this increased compliance workload.
V	Relevance to Single Outcome Agreement	Outcome 4 - We live in resilient, cohesive and safe communities.

Outcome 8 - We have the most efficient and effective use of resources by minimising our impact on the built and natural environment.

VI Resources - (Financial, Staffing and Property)

If adopted the proposed change will increase costs to the council, as developer, in the future for any proposed projects falling under the definition of high risk buildings which will require a compliance plan manager.

It is noted that research and trialling on a live project is planned to identify the increased workload that will result from mandatory notifications and administering the Compliance Plan procedures so that verifiers can anticipate and plan ahead for this increased compliance workload.

No additional fee income is identified to fund this workload or the expected increased enforcement requirements both of which are in addition to current requirements.

Whilst the increase can't be quantified at this stage it is anticipated a staff resource of around 2 FTE with associated costs of approximately £100,000 will be required.

VII Consideration at PDSP

Due to the timing of the consultation it has not been possible to report the proposed response to the Development and Transport PDSP. However, all panel members have been advised of the proposed response and invited to comment.

VIII Other consultations

Legal Services, Housing Customer & Building Services, Finance & Property Services.

D. TERMS OF REPORT

D.1 Background

This consultation focusses on recommendations from a previous Compliance and Enforcement report and seeks views on strengthening the system by adding additional requirements, including a new Compliance Plan Manager (CPM) role that will manage compliance, as set out in the agreed Compliance Plan (CP), from the start of a project through to its completion. This CPM role would apply only to High Risk Building Types (HRBs) and the consultation seeks views on the types of buildings classified as HRBs.

It will also look to strengthen enforcement measures by considering the use of fines and penalties for offences.

D.2 Proposed Compliance Plan Manager (CPM) Role

It is proposed that a Compliance Plan Manager (CPM) will require to be appointed, by the Relevant Person (normally the building owner or developer), on all HRB projects which are to be detailed in guidance / legislation.

The CPM will work collaboratively with the designer and where appropriate 'contractor' to develop a project CP for approval with the building warrant plans and details based on the "Compliance Plan Handbook" (CPHB) which would be a development of existing national guidance used by verifiers at present to inform the Construction Compliance Notification Plan (CCNP).

The CPM will oversee and be responsible for ensuring the developed and agreed CP is fully discharged from building warrant pre-application discussion stage through to completion of the project.

D.3 Compliance and Enforcement

The review also concluded that the approach to enforcement where non-compliance has been observed, as currently practiced by verifiers, does not appear to be effective and that enforcement needs to be more strongly implemented by local authorities.

Where additional inspections are required by the verifier as a result of initial inspections and compliance issues, additional fees for more in-depth investigations should be levied against the project. Detection of fraudulently produced evidence or certification should result in severe fines and enforcement of full compliance.

At present applicants/contractors do not always inform verifiers when construction projects reach the inspection stages identified within the CCNP. This means verifiers are not always provided with the opportunity to inspect works at the critical stages while elements are visible.

E. CONCLUSION

The recommendations made by the review panel in the report on Compliance and Enforcement seek to provide greater assurance that:

- the need and legal responsibility to comply with the building regulations has been understood by building owners, designer and contractors,
- that this is supported by verifiers, from the start to the completion of a building project, and
- whether a strengthened approach to compliance should focus on high risk buildings

It is proposed that the responses set out in Appendix 1 are agreed and submitted as the council's formal response to this consultation in order that its views can be taken account of prior to the finalisation of revised legislation.

F. BACKGROUND REFERENCES

[Building Regulations - Compliance and Enforcement: Consultation](#)

Appendices / Attachments: One

Appendix 1 – Building Regulations – Compliance and Enforcement - Proposed Consultation response

Contact Person: Jim McGinley, Planning Service Manager, Tel: 01506 282395:

email: jim.mcginley@westlothian.gov.uk

Craig McCorriston
Head of Planning, Economic Development & Regeneration

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Building regulations - compliance and enforcement: consultation

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Title: Building regulations - compliance and enforcement: consultation

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Part 4 – Impact Assessments And Responding To The Consultation

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[Business and Regulatory Impact Assessment \(BRIA\)](#)

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Annex A - Supporting documents and Links

- [SG website](#)
- [Procedural Handbook](#)
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Annex B - Proposal For A New Compliance Plan Manager Role On High Risk Building Types

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Ministerial Foreword



Following the tragic fire at Grenfell Tower in June 2017, the Scottish Government took the swift decision to establish a [Ministerial Working Group on Building and Fire Safety and Compliance and Enforcement](#) to review Scotland's building and fire safety regulatory frameworks. As part of the Group's actions relating to Building Standards, two expert review panels were created. One to review building standards (Fire Safety) chaired by Dr Paul Stollard and the other on Compliance and Enforcement chaired by Professor John Cole. This consultation addresses the work and recommendations of the latter.

Recommendations from these reviews have already been implemented including controls over combustible cladding, improved escape, and strengthened guidance on roles and responsibilities of the person undertaking new building work were added to the [Building Standards Procedural Handbook](#), published on 1 October 2019. The [Building Standards Futures Board](#) was established by the then Minister for Local Government, Housing and Planning, Kevin Stewart, in order to provide guidance and direction on the development and implementation of the longer term recommendations made by the review panels.

As part of the Futures Board programme of work, a Compliance Plan Working Group was formed in 2020, comprising of a range of industry stakeholders, to direct the development of a new Compliance Plan approach to the building regulations.

In the wake of the tragic events at Grenfell Tower in London and the collapse of the external brick wall at Oxfords primary school in Edinburgh, we must ensure we reduce the risk of non-compliance in high risk building types which are within the scope of the policy change (e.g. schools, hospitals, large shops, high rise residential buildings) for the people of Scotland who will live in, and visit them.

I am grateful to the many panel members and Working Group members who gave their time and expert knowledge on how best to further improve compliance in buildings. I would also like to express my gratitude to the former Minister for Local Government, Housing and Planning, Kevin Stewart, for his prior support and direction in moving this important work forward.

This consultation encompasses the recommendations made by the review panel in the report on Compliance and Enforcement, and seeks views on proposed changes to the building standards system in Scotland to provide greater assurance that the risk of non-compliance has been reduced.

I hope you will take this opportunity to give us your thoughts.

Patrick Harvie

Minister for Zero Carbon Buildings, Active Travel and Tenant Rights

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Introduction

This consultation seeks to obtain the views on the development of a new Compliance Plan Manager role within the building standards system which will apply to specific High Risk Building (HRB) types, the definition of these HRBs and the level of fines where work is not carried out in accordance with the regulations.

This consultation forms part of the work undertaken by the Compliance Plan Working Group which is one of seven work streams being directed by the Building Standards Futures Board. The consultation will gather opinions from stakeholders on a review of the building standards system relating to the way in which compliance with the building regulations is assured and enforced to help ensure the health, safety and welfare of people in and around Scotland's buildings and to further the conservation of fuel and power and further the achievement of sustainable development.

The consultation covers four main areas, as follows:

- Creation of a new Compliance Plan Manager (CPM) oversight role on High Risk Building types on behalf of the Relevant Person (normally the owner or developer);
- The definition of High Risk Buildings requiring a CPM;
- Fines and penalties; and
- Impact assessments.

The proposed changes outlined in the consultation aim to:

- Require applicants (building owners and developers) to evidence and document how compliance with the building regulations has been approached from a 'pre-application meeting' (initial) stage through to completion of the building project. The intention is to strengthen compliance across all building types with the new Compliance Plan approach and also to introduce a requirement for independent professional oversight — a Compliance Plan Manager — on high risk buildings to manage the compliance process from start to finish. Initial considerations have concentrated on application to High Risk Buildings (high rise residential, high public value - schools, healthcare facilities) and also housing sites. But this may be extended, in the future, to apply to a wider range of buildings types if there is evidence to support this. The consultation also seeks views on the definition of buildings classed as 'High Risk Building Types' (HRBs).

Why we are consulting

Following the tragic events at Grenfell Tower, London in June 2017 a Ministerial Working Group (MWG) was set up to oversee a review of building and fire safety with two expert review panels being created. One panel considering Fire Safety and the other focussing on Compliance and Enforcement, the latter chaired by Professor John Cole who had led on the independent inquiry into the collapse of a brick outer wall at Oxfords primary school in February 2017 during a storm. The review panels published their reports and recommendations and this consultation focusses on recommendations from the Compliance and Enforcement report.

The review panel on Compliance and Enforcement in Scotland concluded that the Scottish system is not broken but that evidence clearly shows there is a need to strengthen compliance, both in relation to statutory procedural requirements and in addressing non-compliant work on site.

The report also concluded that the current system in Scotland has much to commend it, in particular the pre-emptive aspect of obtaining a building warrant prior to starting on site. The

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benefits of this element of the Scottish approach were recognised in the Dame Judith Hackitt report on building standards in England, which recommended the adoption of the Scottish pre-emptive approach for use in the case of high rise residential buildings and other higher risk developments.

Despite the recognised benefits of the current system in Scotland, recent evidence has indicated that there are issues that need to be addressed, particularly in relation to how effectively the system is actually implemented, especially during the construction phase to ensure works are completed as intended with the design and approved building warrant.

The review panel concluded that, whilst simultaneously maintaining the core elements of the system, some reshaping would be advised to ensure that it addresses the identified weaknesses. The focus of this reshaping is to improve aspects of the current system and its implementation, not to fundamentally change it.

In 2018 the Scottish Government consulted on the review panels recommendations¹. A total of 222 survey responses were received, and 246 individuals attended awareness events that were held around the country.

This consultation seeks to build on the findings from the 2018 consultation which have already been accepted as part of the new Compliance Plan process (as included in **Annex B**) and further develop the work on compliance and enforcement. Views are sought on strengthening the system by adding additional requirements, including a new Compliance Plan Manager role that will manage compliance, as set out in the agreed Compliance Plan, from the start of a project through to its completion. It will also look to strengthen enforcement measures by considering the use of fines and penalties for offences.

This CPM role would apply only to High Risk Building Types (HRBs) and the consultation seeks views on the types of buildings classed as HRBs. Views are also sought on whether there should be a requirement to appoint a CPM on existing buildings that would fall within the scope of the HRB definition where they are being created by a conversion or in situations where these types of buildings are being altered or extended.

How we would like you to help

This consultation is comprised of 15 questions related to:

- Part 1 - Creation of a new Compliance Plan Manager (CPM) oversight role on High Risk Building types on behalf of the Relevant Person (normally the owner or developer);
- Part 2 - The definition of High Risk Buildings requiring a CPM;
- Part 3 - Level of penalties/fines relating to enforcement action under the building standards system; and

¹ [Building Standards Compliance and Fire Safety – a consultation on making Scotland's buildings safer for people \(www.gov.scot\)](https://www.gov.scot/building-standards-compliance-and-fire-safety-consultation)

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- Part 4 - Impact assessments.

Responses to the consultation will be used to inform the final policy and impact assessments that will be prepared in support of any legislative changes.

Information on how to respond to the consultation is on page 23.

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Part 1: Creation Of A New Compliance Plan Approach/Process To Demonstrate Compliance With The Building Regulations

Overview of the existing building standards system

The building standards system in Scotland operates under the Building (Scotland) Act 2003, introduced in 2005 and is a pre-emptive system, carried over from the previous building standards system administered under the Building (Scotland) Acts of 1959 and 1970. This means that before any work that requires a building warrant can start, the building warrant must be submitted to the relevant local authority verifier for assessment and approval against the Mandatory Functional Standards. Verifiers are appointed by Scottish Ministers to administer the building standards system in Scotland. The 32 local authorities have been appointed as verifiers to deliver the building standards service in their own geographical areas. Their role is to protect the public interest by providing an independent check of applications for building warrants. This includes checking the design phase before granting the warrant and checking during the construction phase before accepting a completion certificate is accepted prior to new buildings being occupied.

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

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

The current CCNP details the construction stages that the verifier requires evidence of compliance with the standards. The CCNP sets out the appropriate methods of providing the evidence. This is generally by way of on-site inspections by the verifier, but may also include digital evidence, testing records, Certification of Construction (as defined under the Act) and other forms of certification as agreed with the verifier. Links to the Verification During Construction Handbooks, which provide guidance to verifiers on the drafting of CCNPs can be found on the Scottish Government website at <https://www.gov.scot/publications/building-standards-verification-during-construction-handbooks/>

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

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

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

CCNPs were introduced in 2012 following the first compliance and enforcement public consultation in 2008. The Scottish Government undertook to review the building standards system three years after the Act came into force on 1 May 2005. The outcome was a review of process and procedures and the introduction of the Performance Framework in 2012, under which CCNPs are Key Performance Outcome 2 (KPO2). The purpose of the CCNP being to provide developers and verifiers with a clear view of when verifier inspections should take place using a risk based approach to inspections to enable verifiers to maximise their effectiveness in deploying their resources for the monitoring of building work. However, it was the view of the Compliance and Enforcement Panel that there was a need for a more robust approach to compliance planning and documented evidence of compliance.

2018 Compliance and Enforcement review panel report findings

The Compliance and Enforcement review panel report finding confirmed:

"It is clearly the legal responsibility for the building owner or developer to comply with the Building Regulations and it should be expected of them to have appropriately expert inspection during the course of the construction. However, as has unfortunately been shown, it is insufficient for Building Standards services to rely on the signing of a completion certificate by the owner / developer as confirmation of compliance. Appointed verifiers must act in the public interest by undertaking 'reasonable inquiry' through a combination of undertaking sufficient inspections and requiring proof of independent certification of elements of the construction so as to reasonably ensure that buildings comply with the Building Standards."

"The significant resource applied to the approval of design drawings and specifications is rendered superfluous if the building is not built in accordance with the approved documents thereby undermining the fundamental purpose of the regulations to ensure safe efficient functional buildings."

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“There has been an increased adoption, particularly by public sector bodies, of procurement methods in which the design team are employed by contractors and which enables contractors to determine the nature and level of involvement or otherwise of the qualified design professionals in the inspection and checking of the compliance of those contractors’ work on-site. Perhaps not surprisingly this element of service, which used to be a standard part of a design team’s role, is frequently drastically reduced or even not required at all by employing contractors.”

“Such appointments of design teams frequently contain confidentiality clauses whereby the professional design team are prevented from conveying concerns to the actual client for the project as to defective construction quality or changes from the approved design that they have observed and reported to the contractor. These arrangements have resulted in the situation where there is often limited independent professional oversight by the actual designers of the buildings of the detailed construction of projects and their compliance with Building Standards.”

“Evidence from several recent inquiries indicate that currently it would be inappropriate to assume that contractors’ quality assurance processes and self-certification can be fully relied on or alone can provide the necessary assurance as to compliance with the regulations or with the approved warrant drawings. The failure by some contractors to address defective construction can arise from the natural conflicts of interest for contractors in condemning aspects of their own construction work, as to do so may lead to additional costs of both the necessary remedial work and of any resultant delay to completion for the contractor involved.”

“The combination of these factors has contributed to a situation in which public confidence in the quality and safety of our buildings has been severely dented. It was simply a matter of fortuitous luck and timing that the collapse of external walls at five schools across Scotland in the last few years, (four largely unreported collapses preceded the collapse at Oxbgangs School), did not lead to multiple fatalities or major injuries to school children.”

“Such regular failures within our Construction Industry must not be allowed to continue and while the core responsibility mostly lies with Industry, and to a lesser but still important degree with its clients. Government has a responsibility to ensure that weaknesses in the current implementation of the Building Standards system in Scotland in relation to failures to enforce procedural and site compliance are properly addressed.”

In relation to enforcement, the review panel’s discussions focused more upon compliance than enforcement reflecting the objective of improving compliance and thus reducing the need for enforcement activity. However, there was a wide agreement that the current approach to enforcement required strengthening with the need for local authorities to take more effective action in situations where non-compliance is identified. In relation to enforcement, the review panel report noted:

“The review panel on Compliance and Enforcement in Scotland concluded that the Scottish system is not broken but that evidence clearly shows there is a need to

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strengthen compliance both in relation to statutory procedural requirements and in addressing non-compliant work on site. It also concluded that the approach to enforcement where non-compliance has been observed, as currently practiced by verifiers, does not appear to be effective and that enforcement needs to be more strongly implemented by local authorities.”

“Where additional inspections are required by the verifier as a result of initial inspections and compliance issues, additional fees for more in-depth investigations should be levied against the project. Detection of fraudulently produced evidence or certification should result in severe fines and enforcement of full compliance.”

“The level of financial penalties that can currently be levied is insufficient to incentivise those contractors undertaking major projects, who may not comply fully with the regulations, to desist from doing so. The contractual penalties for late completion together with the cost of any remedial work required to address non-compliance may frequently considerably exceed these penalties. It is recommended that the level of penalties be reviewed so as to act as a true disincentive of failure to comply with both statutory procedures and standards.”

The full Compliance and Enforcement review panel report² can be accessed at <https://www.gov.scot/publications/report-review-compliance-enforcement/>

A strengthened approach to compliance with the building regulations

The review panel report proposed that the CCNP process could be further developed into a new strengthened ‘Compliance Plan’ approach with the Compliance Plan being created by the applicant/developer for discussion and approval by the verifier. It was suggested that more robust Compliance Plans should take into account the following:

- the projected programme for the project
- the level of detailed information that is required to be submitted with the warrant application
- the form of procurement to be used
- the extent and nature of the client’s technical representatives
- the experience and expertise of the contractor if known
- any proposed staging of warrants
- the higher risks elements of the building
- the documented evidence that the verifiers will require to be produced by the developer during construction, (suggested term Construction Compliance Evidence Documentation (CCED)), and
- the nature, frequency and specific stages of planned visits by building inspectors to the site and notification requirements.

At present the CCNP is created using national guidance (Verification During Construction Guidance) developed by Local Authority Building Standards Scotland (LABSS) and BSD. The

² [Building standards compliance and enforcement review: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/report-review-compliance-enforcement/)

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CCNP is issued by the verifier with the approved building warrant. The proposed Compliance Plan, as suggested, would change this process and instead would require the Compliance Plan Manager, the designer and potentially the contractor (where appropriate, as contractors may not always be appointed at this early stage) to develop the Compliance Plan. The Compliance Plan would then be submitted to the verifier for agreement and issue with the building warrant.

The review panel report stated:

“It must be made clear that it is the legal responsibility of clients for all buildings that will be occupied, used, worked in or visited by members of the public to ensure that these buildings are compliant with the regulations. This responsibility should include a requirement on the client and appointed agents to the client to provide Building Standards services with the necessary evidence to demonstrate compliance.”

“For that evidence to be relied upon by Building Standards services, it should be required to be produced by appropriately qualified professionals with indemnity insurance cover. The review panel considered that clarification and strengthening of the roles and responsibilities of clients and developers in this regard was an essential element in improving compliance.”

At present applicants/contractors do not always inform verifiers when construction projects reach the inspection stages identified within the CCNP. This means verifiers are not always provided with the opportunity to inspect works at the critical stages and critically before elements of the construction are covered up. Making such notification mandatory in line with the findings of the previous consultation and requiring the CPM, designer, and contractor to develop and submit the new Compliance Plan instead of the verifier will make the process of compliance, and appropriate compliance inspection stages, more visible and better understood as requirements of the building standards system by those persons responsible for ensuring compliance, namely the Relevant Person (normally the building owner or developer).

As the current system of notification (CCNP) for all verification inspection stages is not mandatory, overall there are significant numbers of identified verification inspections not achieved. In this respect, the rigour provided by the new Compliance Plan process may for many verifiers increase or indeed significantly increase inspection workload beyond current activity even if, as is planned, the inspection notification stages remain essentially as currently required within the Verification During Construction Handbook.

Research and trialling on a live project is planned to identify the increased workload that will result from mandatory notifications and administering the Compliance Plan procedures so that verifiers can anticipate and plan ahead for this increased compliance workload.

The review panel also raised issues with the fact that under the current Scottish system there is no requirement for the Relevant Person (RP) signing the completion certificate, to have any particular competence, training or qualification in construction, irrespective of the size, complexity or height of the building that he or she is signing as compliant.

The Compliance and Enforcement review panel noted:

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“This has meant that the completion certificate process is often not treated by those signing it with the level of diligence implied in the legislation. Without any requirement for specific knowledge on the part of the person signing the certificate, this process cannot provide the necessary level of assurance to confirm the compliance of all work on site, the majority of which will not have the benefit of having been inspected by Building Standards services.”

The panel felt that consideration should be given to the completion certificate being assigned to those appropriately qualified. This consultation addresses this point and in the case of HRBs the CPM identifies that it could be a member of the design team or an appropriately qualified employer’s agent or other independent appointee that is appointed to the role.

However, even with some form of enhanced oversight in place, the panels view was that it should remain the responsibility of verifiers to issue acceptances of completion. This gives the process the appropriate importance, authority and independence from commercial interests and allows the appropriate site inspections and audits of the evidence submitted to them by certifiers of compliance to be carried out.

Based on the views of the Compliance and Enforcement review panel, the proposal is that a CPM be appointed on all HRB projects. On HRBs only the RP or the CPM (a suitably qualified construction professional) acting on behalf of the RP, could submit the completion certificate submission.

The Building Standards Futures Board

A public consultation ‘Building Standards Compliance and Fire Safety – A Consultation on Making Scotland’s Buildings Safer for People’ was carried out between July and September 2018. The responses were supportive of change to strengthen current building standards guidance to improve building quality, compliance and enforcement. Eighty two percent of respondents agreed that a ‘Compliance Plan’ should be provided to demonstrate compliance with the building regulations from concept to completion.

As a result, the Building Standards Futures Programme Board was set up to provide guidance and direction on the development and implement of the recommendations made by the review panels on Compliance and Enforcement and Fire Safety.

The Board’s remit is to strategically advise and direct a broad programme of work aimed at improving the performance, expertise, resilience and sustainability of the Scottish building standards framework and services across Scotland. Recommendations are being taken forward through seven work streams which are interlinked and collectively aim to drive transformation of the building standards system in Scotland.

This includes a Compliance Plan Working Group, made up of industry stakeholders and academia, focussing on the development of a new, extended and strengthened ‘Compliance Plan’ approach, and the creation of a Compliance Plan Manager oversight role acting on behalf of the ‘Relevant Person’ (normally the building owner or developer) to deliver projects subject to the building regulations. The aim being to deliver greater

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assurance, through evidenced process, that buildings are compliant during both the design and construction stage.

The Compliance Plan Manager (CPM) role - Enhanced oversight of the building standards system

It is proposed that a CPM will require to be appointed, by the Relevant Person, on all High Risk Building (HRB) projects (detailed in guidance/legislation). The CPM will work collaboratively with the designer and 'contractor' (where appropriate due to procurement route as contractors may not always be appointed at this early stage) to develop a project Compliance Plan for approval with the building warrant plans and details based on the "Compliance Plan Handbook" (CPHB) which would be a development of existing national guidance used by verifiers at present to inform the CCNP. The CPM will oversee and be responsible for ensuring the developed and agreed CP is fully discharged from building warrant pre-application discussion stage through to completion of the project.

The CPM will ensure that the necessary construction compliance evidence documents, as set out in the Compliance Plan, have been collated to support the competent submission of the completion certificate application to the verifiers at the end of the process. Under the Building (Scotland) Act 2003 it is an offence to recklessly submit a completion certificate to a verifier. Such evidence of competent process can, in summary, also provide greater assurance and, if necessary, support redress for those that subsequently take on the responsibility for a completed building or building works.

The proposed Compliance Plan Manager role on High Risk Building Types

The 2018 Consultation on Building Standards Compliance and Fire Safety asked the question:

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

There were 222 respondents, and 205 responded to the question. The majority (84%) of respondents agreed that the building owner or developer should be required to appoint a competent professional person, with the appropriate experience and qualifications (guidance to be provided in the Compliance Plan Handbook) to act on their behalf in order to assure them of compliance when they submit the completion certificate.

Responses to the 2018 public consultation supported the proposal for the appointment of a competent professional person. The Compliance Plan Working Group, made up of industry stakeholders and academia, was set up to undertake a comprehensive and open discussion around the reality of why non-compliance occurs. The aim being to provide greater assurance that the need and legal responsibility to comply with the building regulations has been understood by building owners, designer, contractors, which is supported by verifiers, from the start to the completion of a building project. To also consider whether a strengthened approach to compliance should focus on high risk

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projects and safety critical elements. This work has delivered the proposals for a new oversight role acting on behalf of the Relevant Person (normally the building owner or developer). This new role, is referred to as the Compliance Plan Manager. The CPM role, scope and duties are set out in **Annex B**.

The questions in Part 1 should be considered after reviewing Annex B.

Question 1.1 - Do you agree with the CPM role as detailed in Annex B on projects for all HRBs?

Strongly agree	<input checked="" type="checkbox"/>
Agree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly Disagree	<input type="checkbox"/>

Please select only one answer and provide your reasoning in the box below.

Comments:

The Compliance Plan Manager role would be a valuable tool towards better compliance in HRB's. However, it may be beneficial to expand this to all projects, including low risk ones through the relevant person as mentioned in Annex B paragraph 10 (Page 29) to the consultation.

Question 1.2 - Do you agree the CPM should be independent of the contractor?

Strongly agree	<input checked="" type="checkbox"/>
Agree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly Disagree	<input type="checkbox"/>

Please select only one answer and provide your reasoning in the box below.

Comments:

This would go some way to alleviate any perceived conflicts of interest. However, if the confidentiality clauses whereby the professional design team are prevented from conveying concerns to the actual client for the project as to defective construction quality or changes from the approved design that they have observed and reported to the contractor are to remain could this prevent this role being affective?

Does this ensure that any confidentiality clause if implemented will not impact on the effectiveness of the Compliance Plan Manager?

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Question 1.3 - Do you agree that the CPM role needs to be appointed no later than pre-application stage for all HRB projects?

- | | |
|----------------------------|-------------------------------------|
| Strongly agree | <input type="checkbox"/> |
| Agree | <input checked="" type="checkbox"/> |
| Neither agree nor disagree | <input type="checkbox"/> |
| Disagree | <input type="checkbox"/> |
| Strongly Disagree | <input type="checkbox"/> |

Please select only one answer and provide your reasoning in the box below.

Comments:

It would be beneficial to have a Compliance Plan Manager appointed at pre-application stage.

However, so long as the Compliance Plan Manager fully understands the project and their role in the project and is in place prior to the Compliance Plan being produced this should suffice.

Can legislation enforce such a role prior to a Building Warrant being submitted?

Generally low-rise volume house building sites historically have never really requested a pre-application meeting nor is this generally required by the verifier.

Question 1.4 - Do you agree that a standardised competency framework for the CPM role should be developed by professional bodies/industry?

- | | |
|----------------------------|-------------------------------------|
| Strongly agree | <input checked="" type="checkbox"/> |
| Agree | <input type="checkbox"/> |
| Neither agree nor disagree | <input type="checkbox"/> |
| Disagree | <input type="checkbox"/> |
| Strongly Disagree | <input type="checkbox"/> |

Please select only one answer and provide your reasoning in the box below.

Comments:

This is essential to ensure that those carrying out the Compliance Plan Manager role are appropriately qualified. There may be an opportunity for Local authority building standards Scotland (LABSS) to be involved in establishing any competency framework for a Compliance Plan Manager.

Building regulations - compliance and enforcement: consultation

Part 2 – High Risk Building Types

Overview

This section of the consultation seeks to establish what high risk building types should be subject to strengthened building standards system requirements. This will include a requirement to appoint a Compliance Plan Manager (CPM), independent of the contractor, to develop along with the designer and contractor (where appointed) a Compliance Plan and oversee the plan as agreed by the verifier through to the completion of the building.

It is proposed that a CPM will be appointed on all ‘in scope’ HRB projects. The CPM will work collaboratively with the designer and contractor to develop a project Compliance Plan for verifier agreement and approval with the building warrant plans and details based on the Compliance Plan Handbook CPHB. The CPM will then oversee and be responsible for ensuring the agreed Compliance Plan is fully discharged from project inception to completion. During the construction phase, the CPM will collate the compliance evidence on behalf of the Relevant Person, facilitate the agreed verification inspections/checks and submit, at the appropriate stages, the verification compliance evidence required by the verifier as detailed in the CP along with the completion certificate submission application. In doing so, this now provides evidence and documentation to substantiate the competent submission of the completion certificate which at present does not require such detailed supporting evidence to be submitted to the verifier.

The Compliance and Enforcement review panel noted:

“For non-domestic buildings and high rise residential buildings, it was agreed that a more specific approach to the individual building would be required in determining the nature, frequency and timing of proposed inspection plans. This would take account of the function of the building, its location, proposed occupancy, scale, height, complexity of design and related risk factors.”

Building regulations - compliance and enforcement: consultation

Taking into account the recent failings on certain building types resulting in fatal or potentially fatal consequences, the potential consequences of public buildings being unavailable for use, and the impact that non-compliance can have on how buildings perform in use, it is proposed that the following 'in scope' building types should apply:

Building Types in scope to be defined as an HRB

- **Domestic building or residential building with any storey at a height of more than 11 metres above the ground.**
- **Educational establishments (schools, colleges and universities), community/sport centres and non-domestic buildings under local authority control/where they have an interest in a building.**
- **Hospitals**
- **Residential care buildings**
- **Housing sites (low-rise)**

Question 2.1 - Do you agree domestic building or residential building with any storey at a height of more than 11 metres above the ground should be defined as an HRB?

Strongly agree	<input type="checkbox"/>
Agree	<input checked="" type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly Disagree	<input type="checkbox"/>

Please select only one answer and provide your reasoning in the box below.

Comments:

There would be further benefit in extending High Risk Buildings to include any flatted developments more than 2 storeys accessed from a common stair and to encompass any residential building.

Question 2.2 - Do you agree that educational establishments (schools, colleges and universities), community/sport centres and non-domestic public buildings under local authority control/where they have an interest in a building should be defined as a HRB?

Strongly agree	<input checked="" type="checkbox"/>
Agree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly Disagree	<input type="checkbox"/>

Please select only one answer and provide your reasoning in the box below.

Building regulations - compliance and enforcement: consultation

Comments:

These buildings generally have a high occupancy with different types of users and as such all efforts should be made to ensure compliance during construction.

Question 2.3 - Do you agree that hospitals³ should be defined as a HRB?

- | | |
|----------------------------|-------------------------------------|
| Strongly agree | <input checked="" type="checkbox"/> |
| Agree | <input type="checkbox"/> |
| Neither agree nor disagree | <input type="checkbox"/> |
| Disagree | <input type="checkbox"/> |
| Strongly Disagree | <input type="checkbox"/> |

Please select only one answer and provide your reasoning in the box below.

Comments:

It would be expected hospitals would be defined as a high-risk building

Question 2.4 - Do you agree that residential care buildings should be defined as a HRB?

- | | |
|----------------------------|-------------------------------------|
| Strongly agree | <input checked="" type="checkbox"/> |
| Agree | <input type="checkbox"/> |
| Neither agree nor disagree | <input type="checkbox"/> |
| Disagree | <input type="checkbox"/> |
| Strongly Disagree | <input type="checkbox"/> |

Please select only one answer and provide your reasoning in the box below.

Comments:

It would be expected that residential care buildings would be defined as a high-risk building given the vulnerabilities of the occupants.

³ [Building standards technical handbook 2020: non-domestic - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/building-standards-technical-handbook-2020-non-domestic/pages/1-1-introduction-to-the-handbook/building-types/building-types.aspx)

Building regulations - compliance and enforcement: consultation

We would like to gauge opinion on whether or not low-rise volume housing sites should be considered 'in scope' and require to follow the same strengthened compliance process as those defined under the HRB category. This would go beyond the review panel on Compliance and Enforcement recommendations to address high risk building types. However, the Compliance Plan Working Group felt there would be merit in exploring whether the strengthened system should be applicable to low-rise volume house buildings sites driven by the effect on climate as new housing accounts for a large part of the newly created built environment.

Question 2.5 - Do you agree low-rise volume house building sites should be defined as a HRB?

Strongly agree	<input checked="" type="checkbox"/>
Agree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly Disagree	<input type="checkbox"/>

Please select only one answer and provide your reasoning in the box below.

Comments:

There is a strong public interest in new build housing with a particular focus on climate change and anything that strengthens compliance in this area should be adopted for this building type.

Question 2.6 - Do you agree that where a building that falls into one of the defined HRB categories either by conversion or where an existing HRB is being altered or extended that these building types should need to follow the strengthened Compliance Plan regime and require a Compliance Plan Manager to be appointed.

Strongly agree	<input checked="" type="checkbox"/>
Agree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly Disagree	<input type="checkbox"/>

Please select only one answer and provide your reasoning in the box below.

Comments:

With the exception of low-rise volume building sites any building previously identified as an HRB that is being altered or converted should be subject to a strengthened compliance plan and the appointment of a Compliance Plan Manager. It would seem to lessen the good work done previously via a Compliance Plan Manager and strengthened Compliance Plan if this was not the case.

This could go some way to drive compliance and mitigate against any potential failings e.g. existing fire stopping being damaged / removed and not repaired that may occur during conversion / alteration works. Issues such as this could form part of a strengthened Compliance Plan. Major events previously have on occasion been as a result of alterations to existing buildings.

Building regulations - compliance and enforcement: consultation

PART 3 - Enforcement

Overview

The Building (Scotland) Act 2003 contains a range of enforcement powers. The Act gives powers to local authorities (LA) to deal with work that is undertaken without a building warrant (where one was required) and work which has not been undertaken in accordance with a building warrant. The Act also provides powers to deal with buildings they consider to be dangerous or defective.

When a LA considers a building to be dangerous it has a duty to act and it is expected that it will respond immediately. This might include taking urgent action to carry out work, including demolition, as it considers necessary to reduce or remove the danger.

The 2003 Act also gives LAs powers where buildings are defective to take action as appropriate. The range of actions includes serving a notice calling for work to be carried out to improve the quality of properties that are in disrepair, or doing the work in default of the owner complying with the notice.

Local authorities can serve a notice on the building owner, take action where the building is dangerous or defective or the construction does not meet building regulations. They also have powers to recover their costs.

Local authorities currently have **no** enforcement powers to take action on non-compliances found after the completion certificate is accepted by the verifier.

Penalties for offences

The current penalty for a person found guilty of an offence on summary conviction is a fine not exceeding level 5 on the standard scale (£5,000).

Strengthening of powers, penalties for offences

As part of the proposal to improve compliance and utilise enforcement powers where work is not carried out in accordance with the building warrant, we are seeking your views on the principle of introducing a new enforcement power for local authorities to take action post completion certificate acceptance. Views are also sought on what level of fines should be applied and specifically the level of fine appropriate for high risk buildings (HRBs).

Question 3.1 - Do you have a view on the introduction of a new enforcement power for local authorities to take action on non-complaint work after the acceptance of the completion certificate?

Yes

☒

No

☐

Comments

Don't feel there is any merit in this – if a completion certificate has been accepted, the verifier has done so in good faith whilst using reasonable enquiry. This should be the responsibility of the owner and their contractor / legal representatives to resolve without the use of enforcement from the Local Authority. Unless the building is dangerous the Local Authority should not be involved.

Building regulations - compliance and enforcement: consultation

Question 3.2 - Do you have a view on what the level of fines should be for non-compliance with the building regulations?

Yes ☒

No ☐

Comments

Any fines should be enough to provide a deterrent – currently this is not the case. Taking cases through enforcement needs to be an easier process, particularly where the case is to be presented to the procurator fiscal.

Question 3.3 - Do you have a view on what the level of fines should be for non-compliance in high risk buildings?

Yes ☐

No ☒

Comments

There should be enough of a deterrent in the fine for non-compliance with the building regulations regardless of the building type.

Building regulations - compliance and enforcement: consultation**PART 4 – Impact Assessments And Responding To The Consultation****Equality Impact Assessment**

The Scottish Government does not think that the proposals in the consultation will have potentially negative impacts for equality groups. However, we welcome your comments on the impact of the proposals on particular groups of people in respect of their age, disability, gender reassignment, race, religion, sex or sexual orientation, being pregnant or on maternity leave and children's rights and wellbeing. Your views on the impact of these proposals will be used to inform the final Equality Impact Assessment that will be prepared in support of any changes required to the building standards legislative framework.

Question 4.1 - Are there any proposals in this consultation which you consider to impact or have implications on equality groups? Choose from the following options:

Yes ☐No ☒Unsure ☐

Please select only one answer and provide any comments in the box below. If selecting yes, please specify which of the proposals you refer to and why you believe specific groups will be impacted.

Comments: None

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Business and Regulatory Impact Assessment (BRIA)

To help us determine the impact of the policies proposed in the consultation, we are interested to find out if these proposals would lead to increased costs and/or impact on resources for you or your business (if applicable).

Any comments received will be used to inform the final BRIA which would be prepared in support of any new or amended guidance or legislation.

Question 4.2 - 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)? Choose from the following options:

Yes ☒ X

No

Unsure ☐

Please select only one answer and provide any comments in the boxes below. If selecting yes, please specify which of the proposals you refer to and why you believe financial, regulatory or resource implications will be impacted.

Comments:

The implementation of the CPM role will have a financial impact on WLC as a developer due to the creation of this new role.

In addition, whilst it is noted research and trialling on a live project is planned to identify the increased workload that will result from mandatory notifications and administering the Compliance Plan procedures, the additional expected site inspections will have a staff resource implication which it is estimated will require an additional 2 FTE staff resource with anticipated costs of circa £100,000.

If not directly funded the fee scale structure should be revisited to ensure full cost recovery is achieved on applications. It should be also be noted that this on cost does not include any additional posts or funding for any increased enforcement provision which is also expected.

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Responding to this Consultation

We are inviting responses to this consultation by 04 February 2022.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/building-standards/highriskbuildingcompliance>

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 04 February 2022.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to buildingstandards@gov.scot or by post:

Thomson Dyer
Building Standards Division
Scottish Government
Denholm House
Almondvale Business Park
Livingston
EH54 6DE

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Building regulations - compliance and enforcement: consultation

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at buildingstandards@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

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Respondent Information Form

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

☐ Individual

X Organisation

Group/Org Type (please tick one)

Local Authority	X	Commercial	
Professional Body		Voluntary	
Contractor/Developer		Housing	
Designer/Consultant		NDPB/Agency	
Academic Body		Advisory	
Industry Association/ Manufacturer		Other (Please Specify	

Full name or organisation's name: Wes Lothian Council

Address: West Lothian Council Civic Centre Howden South Road Livingston

Postcode: EH54 6FF

Email: chris.rae@westlothian.gov.uk

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

- ☒ Publish response with name
- ☐ Publish response only (without name)
- ☐ Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- ☒ Yes
- ☐ No

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Annex A

Supporting documents

- SG website – Building Standards Division - <http://www.gov.scot/bsd>
- Procedural Handbook - <http://www.gov.scot/Topics/Built-Environment/Building/Buildingstandards/ProceduralLegislation/ProceduralHandbook>
- Ministerial Working Group on Building and Fire Safety - <https://beta.gov.scot/groups/ministerial-working-group-building-and-fire-safety/>
- Building Standards Futures Board - [Building Standards Futures Board - gov.scot \(www.gov.scot\)](http://www.gov.scot/Topics/Built-Environment/Building/Buildingstandards/FuturesBoard)
- Building Standards Verification During Construction: Handbooks - [Building standards verification during construction: handbooks - gov.scot \(www.gov.scot\)](http://www.gov.scot/Topics/Built-Environment/Building/Buildingstandards/VerificationDuringConstruction/Handbooks)

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Annex B

Proposal For A New Compliance Plan Manager Role On High Risk Building Types

Introduction

1. This paper sets out the proposed role of the Compliance Plan Manager (CPM).
2. The CPM's role is to ensure that the Compliance Plan (CP) is fully executed and achieved on behalf of the Relevant Person (RP) as their 'Duly Authorised Agent'.
3. The Compliance Plan details the inspections and other compliance evidence that the CPM determines is required for the RP or CPM as their agent to submit the completion certificate, inspections and compliance evidence that the verifier will require to support their application of reasonable inquiry.
4. It is proposed that a CPM will require to be appointed on all High Risk Building (HRB) projects (detailed in guidance/legislation) and will work collaboratively with the designer and 'contractor' (where appropriate due to procurement route as contractors may not always be appointed at this early stage) to develop a project CP for approval with the building warrant plans and details based on the "Compliance Plan Handbook" (CPHB). The CPM will oversee and be responsible for ensuring the developed and agreed CP is fully discharged from building warrant pre-application discussion stage through to completion.
5. There will be a requirement to appoint a CPM by the pre-application discussion stage—at the latest. This is in recognition that a building project, can take a long time from start to finish, beyond that of the building standards process, and the pre-application stage is likely to be the first interaction with the building standards system. The CPM will be responsible for the building standards stages of the project and therefore needs to be appointed no later than this stage. This however does not preclude the RP appointing the CPM earlier as good practice. The early appointment of a CPM may add value to the design process by identifying risk elements in the proposal that may not otherwise have been considered.
6. Where a building warrant application is submitted without a CPM being appointed (on an HRB projects), this will delay the progress of the application. A CPM must be appointed before the application will be considered. The Scottish building standards system is pre-emptive, and work cannot proceed legally until permissions are in place. Therefore there is a requirement to identify the CPM on the BW application form at the start of the application process. It is recognised however that the CPM should have been identified and appointed by the RP prior to this stage to enable involvement in the mandatory pre-application discussions on HRBs.
7. A CP must be agreed at the outset of every project and will be used to demonstrate, through the collection of evidence and documentation how the risk of non-compliance has been minimised and also the verifier's (local authority building standards service) reasonable inquiry requirements have been met. All parties involved in a project must be able to provide the necessary written assurances and documentation to the CPM throughout the project as well as at the completion stage. The CPM will collate and interrogate the evidence to support the compliant construction and completion of approved

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building warrant works. They will provide the necessary assurances, in the form of a fully discharged CP, to the RP to permit the competent submission of the completion certificate to the verifier either by the relevant person or the CPM acting as their agent.

8. The appointment of a CPM to act on behalf of the RP will remove any ambiguity over responsibilities. The responsibility for compliance, under the Scottish building standards system, rests with the RP (usually the building owner or developer). This will place a duty on any RP procuring a new HRB building or new HRB building works, to have in place appropriate compliance oversight, in the form of the CPM, from pre-application discussion stage through to completion.
9. The Building Warrant application form will be amended to require details of the RP to be added at the outset. This will clarify that the RP is legally responsible for compliance with the building regulations. The RP or their duly appointed representative is responsible for undertaking all the necessary checks needed to ensure compliance. This makes it clearer to all involved, from the outset, that the role of the verifier is to undertake periodic inspections to ensure the checks that are put in place by the RP are working as intended.
10. On lower risk projects, out with the definition/scope of an HRB, it may be feasible for the compliance oversight role to be performed by the RP or the builder. This may be more proportionate due to the relatively low cost and lower risk factors. The application of the CP approach must be proportionate to risk as agreed by the Working Group. However, this would still result in a strengthening of the current process where it is unclear who - if anyone - is actually performing a compliance check beyond the checks undertaken by the LA verifier in their checks under reasonable inquiry. This would clarify the oversight put in place on behalf of the building owner/RP as set out in the extract from the Compliance and Enforcement review detailed below.
11. This requirement for a CPM or Duly Authorised (Compliance) Agent aligns with the findings of the review panel on Compliance and Enforcement:

“It is clearly the legal responsibility for the building owner or developer to comply with the Building Regulations and it should be expected of them to have appropriately expert inspection during the course of the construction.”

The Role of the Compliance Plan Manager

12. The view of the Compliance Plan Manager sub-group, formed of industry stakeholders and academics, is that the CPM role should be undertaken by a construction professional with appropriate Professional Indemnity Insurance (PII). This will provide assurance to the RP that checks will be thorough and discharged in a professional way. The CPHB will have CPM competency requirements guidance.
13. The sub-group also concluded that it would be unrealistic for the CPM to possess all the specialist knowledge and expertise needed on all aspects of a building project. Therefore there will be a need for the CPM to draw on the experience and expertise of others involved in the project. This will include designers, specialist contractors, site inspectors and others as appropriate to confirm compliance has been met. It would be the CPM's responsibility to identify information required from others and ensure this information is documented to support the CP being discharged in full.

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14. Having a CPM does not remove the duty from contractors or others to have in place measures to ensure works are carried out in accordance with the approved design and the building regulations/standards. The CPM does not undertake a supervisory role for every aspect of a project. The CPM may undertake inspections, at specific stages set out in the CP and the inspections will be based on the nature of the project and the identified risks. The CPM will also collate other pre-determined compliance evidence, including that required by the verifier. The CPM role has been developed for use on all high risk buildings initially with the potential of scaling/tailoring to suit lower risk projects as the role is introduced.

15. Having the CPM role embedded within the building standards system is intended to ensure that the RP has continuity of professional oversight, regardless of the contract or procurement method. It will also provide the RP with the necessary assurances that the 'agreed level of inspection' (the Compliance Plan) from pre-application meeting to completion has been fully discharged to support the RP's submission of the Completion Submission to the verifier and that the verifier's necessary inspections, checks and supporting evidence to support the verifier's reasonable inquiry have all been enabled/provided as per the CP.

16. The level of inspection to be undertaken by the CPM will be based on a risk assessment. The number of inspections will vary depending on the building types and the nature of the work being undertaken. The inspections will focus on works that cannot be readily inspected once the building is completed. However, inspections undertaken by the CPM and others specialists should take into account, but should not be limited to:-
 - The risk associated with elements in relation to the integrity of the building as a whole.
 - The experience of the contractor undertaking the works (which may vary during the process and either to increase or decrease if the contractor is found to be more or less competent than originally thought).
 - The pace of the construction i.e. how quickly it will be concealed.
 - How complex the works are (which may require greater levels of inspection).
 - Whether the works are common industry practice or innovative (the latter requiring greater inspection).
 - Accessibility to works (works that cannot be easily inspected, or easily inspected after a certain stage e.g. once scaffolding is removed).
 - On repeatable items, the initial works should be inspected until the CPM is satisfied that the works are to the required standard.

17. The CPM's role within the BS System must have the appropriate authority to be successful. This authority will be drawn from the inability to submit a Completion Certificate (CC) submission without the support of the CPM's sign-off of a fully achieved CP. Without a fully discharged CP, the verifier would automatically reject any CC submission that is not supported by a fully discharged CP. The CP will be an evolving/living document and accordingly, if inspections are missed, then alternative evidence or disruptive inspections could be required to evidence compliance. The CPM as the single point of contact will be responsible for facilitating the checks at the right time ensuring that all the necessary evidence and documentation has been collated and checked to support the CP being fully discharged and enabling a competent CC submission to be made to the verifier.

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18. Confirmation from the CPM to the RP will enable the submission of the Completion Certificate to the verifier in the knowledge that they have not submitted it recklessly, which is an offence under the Building (Scotland) Act 2003.
19. The role of the CPM is to support the RP. Under the 2003 Act the RP has the legal responsibility to demonstrate compliance. Accordingly, the RP must ensure appropriate checks and oversight are put in place to provide the necessary assurances to facilitate the competent submission of a completion submission at the end of the project.
20. The role of the verifier will continue to be an independent check of work that is subject to building warrant approval. Verifiers will continue to deploy their resources accordingly, based on risk, as they determine appropriate. Inspection stages will be identified within the CP (the former Construction Compliance Notification Plan (CCNP)). Verifier inspections may not always be in the form of physical on-site inspection and may be discharged using alternative evidence such as photos, videos, live video feed, third party certification or declarations from construction professionals. It is expected that with a CPM managing the CP a higher number of, verifier inspection stages will be programmed and facilitated by the CPM. Which will, in turn, will lead to higher levels of notification and completed inspections. Under the CCNP system, verifiers are not always notified when works reaches the identified stages in the CCNP. As such, not all CCNPs were fully achieved. Under the proposed CP verifiers will be informed by the CPM when verifier inspection stages are reached. Therefore it is expected that the number of inspections carried out by verifiers will increase due to increased notifications.
21. The role of the RP will not change as a result of the proposals. The aim of the changes are to strengthen the system as recommended by the Compliance and Enforcement review panel. The roles within the system will be clearer and the process more robust to increase the level of compliance assurance from the beginning of a project to the end culminating in a competent CC submission.

The CPM role:

- CPM is appointed by the Relevant Person at the design stage, no later than the design team appointment (CPM being a requirement for all high risk projects).
- Envisaged that there should be a duty to produce a Compliance Plan for verifier approval at the building warrant approval stage for all Building Warrants. For the high risk 'prescribed' building types (e.g. high rise residential, schools, healthcare buildings) a CPM would be required.
- CPM should be a 'suitable' building professional (chartered member of building profession) with PII (CPHB would provide competency guidance for client) acting on behalf of the RP and independent from the contractor. Regardless of the way in which a building is being procured, the CPM appointment should be appointed/identified by the Relevant Person to act in their interest and the wider public interest to reduce the risk of non-compliance during construction and once buildings are complete by creating and overseeing the Compliance Plan from inception to completion.

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- Guidance could state requirements for chartered membership with a professional body which confirms that membership requires competence in assessing a building design and construction for compliance with building regulations along with competence and experience to undertake the manner of works proposed. Supported by an organisational requirements for members to undertake on-going Continual Professional Development.
- Creation of this role should be driven by professional bodies/industry to define 'suitable' via a set criteria - qualifications, experience, level of indemnity cover.
- CPM is acting as “duly authorised compliance agent” to provide continuity of oversight from inception to completion on behalf of the RP. The responsibility for compliance responsibility under the Act remains with the RP, therefore, for the RP to competently discharge their responsibility, they must ensure they appoint, an independent, appropriately resourced, qualified, skilled and experienced persons to undertake the role of CPM, (CPM behaviours would be controlled by professional conduct, clients contract, risk of offending against the Act).
- CPM duties would be discharged if the Compliance Plan is completed/delivered. Discussion around independent construction advisors suggest insurers happier with this approach where scope of inspection/oversight is identified.
 - CPM duty encompasses management of information and verification that required actions are undertaken and recorded. A declaration of the undertaking can be made by the CPM at relevant design and construction stages.
- Using national Compliance Plan Handbook (development and extension of Verification During Construction):
 - At Design stage, a risk assessment statement would be required to be submitted with Building Warrant application to support interrogation of proposals by the verifier.
 - CPM drafts the Compliance Plan for discussion at pre-application meeting, based on the nature of the project, setting out assurances to demonstrate to the verifier how compliance with the building regulations will be achieved with the responsibility of demonstrating compliance resting with the applicant.
 - This would include the Relevant Person Compliance Evidence (RPCE) which would detail the complete package of documentation to be submitted to the Relevant Person including the programme of intended inspections and testing, project dates and stages etc. and the Verification Compliance Evidence (VCE), a separate collation of documentation containing only the relevant evidence required to support the completion certificate submission and includes details of verification notification and inspection stages and any alternative evidence.
 - Finalises and agrees Compliance Plan with verifier for approval with the building warrant.

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- CPM then manages collation of all information, ensures all requirements of the Compliance Plan are met, is the single point contact for verifier, ensures all inspections are facilitated (e.g. designers, specialists and verifiers as part of their reasonable inquiry), submits completed compliance plan with VCE to RP for submission with CC submission – verifier approves or rejects.
- Verifier would reject CC on basis of unfulfilled Compliance Plan, which strengthens the role of the CPM and the Compliance Plan.
- Compliance Plan to be in digital format, accessible to CPM, design team, client and verifier during the building warrant construction phase and would form part of the golden thread of evidence showing how compliance was managed, achieved and evidenced. The Compliance Plan would then be issued with CC, final set of approved building warrant plans and supporting evidence as submitted including for example the fire safety design summary.

Compliance Plan Manager Duties:

- To develop, with the design team and contractor, the RPCE and VCE (the Compliance Plan) based on the building type and associated risks identified in the project and carry out the inspections during construction. The CPM may bring experience that highlights risks that may have been overlooked.
- To co-ordinate and liaise with the contractor on their planned inspection of works.
- To co-ordinate the certification and inspections by others, including the designer, contractor; sub-contractors and specialists.
- To act as the single point of contact for the LA Building Standards Verifiers and to facilitate all verification inspections.
- To ensure that the approved building warrant plans match the building as constructed at least in relation to all building warrant matters to enable the submission of the CC.
- To maintain and compile a record of compliance evidence (consisting of a full and complete documentation for the RP (RPCE) and the VCE required to support the submission of the CC. This must be in an electronic format that can be transferred to new owners and be updated where necessary throughout the life of the building.
- The role of CPM would not include responsibility for the supervision of any contractors. That would be a matter for each individual to ensure they were working to agreed quality assurance standards or standards and codes set by contractual arrangement, their company, trade association or professional body.
- To confirm that the Compliance Plan has been fully discharged.
- The CPM will play a vital role in the process. Without the assurances provided by the CPM that the Compliance Plan has been properly discharged, it is expected that the verifier, under their duty to undertake reasonable inquiry, would not be in a position to accept a completion submission application. This would mean the building would not be able to be sold, occupied or possibly insured.
- The verifier would also be expected to consider if the CC had been submitted properly. If any person submits a CC containing a statement which that person knows to be false or misleading in a material particular or recklessly submits a CC containing a statement which is false or misleading in a material particular, the person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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- The intention is that the CPM role or responsibilities will be applicable to any project and as such has scalability in application dependent on the nature of the project. Many building owners/clients may see the value in independent scrutiny of a builder.
- The change of a CPM should be notified to the verifier as soon as possible with the RP being responsible for ensuring the continuity of compliance.



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Any enquiries regarding this publication should be sent to us at
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