

**Scottish Government – Local Government and Housing Directorate Building Standards Enforcement
and Sanctions**

Consultation response from Propertymark

January 2024

Background

1. Propertymark is the UK's leading professional body for estate and letting agents, inventory providers, commercial agents, auctioneers and valuers, comprising 18,000 members representing over 12,800 branches. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

Consultation – overview

2. Following the Grenfell Tower Fire, all nations in the UK conducted reviews of existing building and fire safety regulatory frameworks as building safety is a devolved issue. In Scotland, a Ministerial Working Group was established, which commissioned a review of compliance and enforcement. The resulting proposals for improving the system of enforcement and sanctions follows two high profile enquires, the Cole Report¹ and DG One Report², as well as subsequent consultations around increasing fines and for a new strengthened building standards system. The Building Standards Enforcement and Sanctions makes the following proposals which amend various sections of the Building (Scotland) Act 2003:
 - Introduce new offences for owners when buildings are occupied illegally.
 - Introduce new powers to local authorities to remove non-authorised work, suspend work through a stop notice and introduces time limits for local authorities to take action against non-compliant buildings.
 - Clarifies local authorities can still take action against non-compliance even though a completion certificate has been accepted.
 - Increase penalties for offences.
 - Apply these penalties to corporate bodies.

¹ <https://www.gov.scot/publications/report-review-compliance-enforcement/>

² <https://cqic.org.uk/reports-and-guidance/dg-one/>

Propertymark response – summary

3. Propertymark welcomes the opportunity to respond to the Scottish Government’s Local Government and Housing Directorate’s consultation on Building Standards Enforcement and Sanctions. As the leading professional body for property agents in the UK, Propertymark is dedicated to ensuring that our members meet the highest standards and clearly understand legislative requirements when managing, letting and buying and selling property. This enables our members to understand what they are required to do but also advise their clients and customers as well. As such, any clarification in how the Building (Scotland) Act 2003 is going to be applied is very welcome. In general, we are supportive of the new system of enforcement and sanctions proposed by the Scottish Government as it will help to improve safety in higher-risk buildings. That being said, we do have some concerns over the proposals to implement time limits on enforcement as this could leave some buildings less safe for residents.

Questions

Question 1: Do you agree with the inclusion of holding owners accountable for new/converted buildings which are occupied illegally?

4. Propertymark strongly agrees that building owners should be held accountable for new/converted buildings which are occupied illegally. Under existing rules, there are little repercussions for building owners to allow buildings to be occupied before they are legally allowed to do so and when it is potentially not safe. Taking action against building owners would help to tackle the source of the issue, rather than residents who may be vulnerable and told that they could move in. As a consequence, more owners and organisations working on their behalf would ensure that completion certificates are obtained, ensuring that more buildings meet new building and fire safety standards.

Question 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?

5. Propertymark agrees with the proposal to introduce a new provision for the removal of work through Building Warrant Enforcement Notices. When enforced effectively, this provides more options for building owners to consider, ensuring that the most suitable option has been chosen in each given circumstance. However, we would urge that local authorities do not issue the removal of work or any option by default. A constructive discussion with the owner should

always take place to ensure that the most appropriate option can be reached, rather than notices being issued as a quick way for the local authority to remove works that are non-compliant.

Question 3: Do you agree that the provision of a standalone stop notice under section 27 would act as a helpful deterrent?

6. We agree that the provision of a standalone stop notice under section 27 has the potential to act as a helpful deterrent. It would provide a greater cost for the owner of the building, ensuring that they have the required warrants before beginning development. The effectiveness of these notices however would depend on three factors. Firstly, the capacity of the local authority to identify and service notices on buildings being developed without the required warrant. Secondly, the ability for local authorities to carry out subsequent inspections of the building site to ensure that work has in fact stopped. Thirdly, that the costs for continuing are greater for the owner than the costs of stopping development.
7. When introduced, local authorities must have the resources required to inspect sites so they can hand out notices and enforce them if works continue. Failing to provide effective resources will mean that the deterrent is ineffective as non-compliant owners will consider that the chances of being handed a notice may be low enough to risk not applying for the necessary warrants. Furthermore, if the cost of failing to comply with the notice is lower than the cost of delaying the development project, the owner will make the logical choice to continue development regardless of the notice, as any fine they would receive would be preferable to delaying development.

Question 4: Do you agree with enforcement after the acceptance of a completion certificate for High-Risk Buildings?

8. Yes, Propertymark agrees that local authorities should be able to take action against owners even if a completion certificate has been accepted. We agree with the assessment that there will be buildings that have received a completion certificate where some risks were overlooked. This will be particularly important in the short-term as new building safety regulations are introduced and expectations for building safety become better understood over time. Failing to do this could mean that clear

building safety issues are not addressed simply due to the fact that a completion certificate has been approved.

Question 5: Do you agree that the introduction of a time limit is necessary?

9. No, we disagree that a time limit for a local authority to serve notices is necessary. While a time limit may encourage local authorities to prioritise action against building works to ensure that notices can be handed out, time limits may lead to notices not being served on some works after the ten-year time limit has passed. We urge local authorities to consider alternative measures to prioritise cases to ensure that action can be taken against all potential building regulation contraventions without the need for a cut off period. The consequence of not being able to serve a warrant against a building regulation contravention could lead to greater risks for residents, especially for older works that could have been overlooked.

Question 6: Do you agree with the introduction of a 10-year time limit for taking action on non-compliant work?

10. No, we disagree with the introduction of a 10-year time limit for taking action on non-compliant work. We do so for two reasons. Firstly, depending on when the time limit is introduced, it could mean that local authorities could not take action on existing buildings with non-compliant works that are older than 10 years. Secondly, it will be more difficult to consistently identify new building risks when new building safety regulations and standards are introduced, due to a lack of familiarity with the new regulations. This could leave risks unidentified for over 10 years, where action can no longer be taken. As a result, risks could remain in buildings which could lead to injury or loss of life for residents. We therefore urge the Scottish Government and Housing Directorate to reconsider a time limit on taking action against non-compliant work.

Question 7: Do you have any views on the 10-year time limit proposed?

11. Our views have been laid out in our response to questions 6 and 7.

Question 8: Do you agree with the level of fines proposed?

12. Yes, we agree with the level of fines proposed. As a further deterrent, we would also recommend introducing an additional daily fine for owners who continue to fail to meet the

requirements of any notice. We envision that this would be applied mostly, but not necessarily exclusively, to owners who continue works after a stop notice has been issued. That would provide a further deterrent to continuing works, bringing the cost of contravening the notice to the costs of delaying the building development.

Question 9: Do you agree with the option to include a custodial sentence?

13. Yes, we agree with the proposed option to include a custodial sentence.

Question 10: Are there any proposals in this consultation which you consider impact or have implications on people with protected characteristics?

14. Propertymark does not have the expertise to answer this question, we would recommend seeking the views of organisations that represent individuals with specific protected characteristics.

Question 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)?

15. Yes, although the proposals do not have significant resource implications. As with any new legislation being introduced, Propertymark will have to ensure that it produces additional resources for our affected members so that they are aware of the new legislation and any implications the legislation will have for them.

Question 12: Do you think that any of the proposals in this consultation have any impact or implications on island communities?

16. Yes, there are logistical concerns for island communities. Considerations must be made when enforcing standards as there will be shortages of professionals and certain building materials, making compliance with building standards more difficult, especially for remedial works. We expect that local authorities within these areas will have the expertise to determine where the non-compliance with regulations is due to negligence and when it is due to difficulties arising from the remoteness of the development. We would recommend that Local authorities be empowered to make these decisions.