

Proposed Domestic Building Environmental Standards (Scotland) Bill

Introduction

A proposal for a Bill to introduce new minimum environmental design standards for all new-build housing to meet the Passivhaus standard or a Scottish equivalent in order to improve energy efficiency and thermal performance.

The consultation runs from 4 May 2022 to 27 July 2022

All those wishing to respond to the consultation are strongly encouraged to enter their responses electronically through this survey. This makes collation of responses much simpler and quicker. However, the option also exists of sending in a separate response (in hard copy or by other electronic means such as e-mail), and details of how to do so are included in the member's consultation document.

Questions marked with an asterisk (*) require an answer.

All responses must include a name and contact details. Names will only be published if you give us permission, and contact details are never published – but we may use them to contact you if there is a query about your response. If you do not include a name and/or contact details, we may have to disregard your response.

Please note that you must complete the survey in order for your response to be accepted. If you don't wish to complete the survey in a single session, you can choose "Save and Continue later" at any point. Whilst you have the option to skip particular questions, you must continue to the end of the survey and press "Submit" to have your response fully recorded.

Please ensure you have read the consultation document before responding to any of the questions that follow. In particular, you should read the information contained in the document about how your response will be handled. The consultation document is available [here](#):

[Consultation Document](#)

[Privacy Notice](#)

I confirm that I have read and understood the Privacy Notice which explains how my personal data will be used.

About you

Please choose whether you are responding as an individual or on behalf of an organisation.

Note: If you choose "individual" and consent to have the response published, it will appear under your own name. If you choose "on behalf of an organisation" and consent to have the response published, it will be published under the organisation's name.

on behalf of an organisation

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

No Response

Please select the category which best describes your organisation

Representative organisation (trade union, professional association)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

SFHA is the membership body for, and collective voice of, housing associations and co-operatives in Scotland. We exist to represent, support and connect our members. Our purpose has never been as important as it will be over the next three years, as we work together following the coronavirus pandemic. In these unprecedented times, our vision is that our members are central to Scotland's social and economic recovery and renewal. It is everyone's right to live in a safe, warm and affordable home, in a thriving community. Our members are uniquely positioned as community anchors across Scotland, supporting people and their communities. Our mission is to sustain and strengthen the impact our members have on people and communities across Scotland.

This consultation response was drafted on the basis of collating information from previous consultation responses, research reports and feedback from specific members who responded to calls for views on the current proposals.

Please choose one of the following:

I am content for this response to be published and attributed to me or my organisation

Please provide your Full Name or the name of your organisation. (Only give the name of your organisation if you are submitting a response on its behalf).

(Note: the name will not be published if you have asked for the response to be anonymous or "not for publication". Otherwise this is the name that will be published with your response).

Scottish Federation of Housing Associations

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number.

We will not publish these details.

Aim and approach - Note: All answers to the questions in this section may be published (unless your response is "not for publication").

Q1. Which of the following best expresses your view of the proposed Bill? Please note that this question is compulsory.

Partially supportive

Please explain the reasons for your response.

Overall, SFHA is supportive of the need to improve the energy performance of new buildings in order to minimise operational energy and keep costs affordable for the occupiers. We are particularly supportive of

Q1. Which of the following best expresses your view of the proposed Bill? Please note that this question is compulsory.

the 'fabric first' approach and the need to ensure healthy indoor environments through appropriate heating and ventilation strategies. Driving standards forwards now will also help to avoid the need for further retrofit at a later date. With the social sector already expected to meet minimum standards of energy efficiency in existing homes, it is vital that homes being built today will contribute to these ambitions.

In the recent review of Section 6 (Energy) of the Building Regulations, we supported the ambition of the 'advanced' standard as this would help to drive further improvements in fabric performance. While this will increase capital costs, it will also ensure energy demand remains as low as possible. This will ultimately help to keep costs affordable for tenants. Although the standard for existing social homes (EESSH) is also currently under review, it is anticipated a new target will be introduced to improve alignment with 'net zero' objectives. Investing in the energy performance of new homes now, will also then avoid the need for our members to fund additional improvements in the future.

As shown in the current consultation, some of our members are already building or planning developments to meet Passivhaus standards on the basis that the increased capital costs will potentially be offset by savings in the whole life costs. However, our members do have some concerns that while adopting a Passivhaus standard (or Scottish equivalent) may be technically achievable, there are wider barriers to delivery including the increased capital costs of building these homes, additional cost and complexity of maintenance, and limited supply chain capacity to deliver at scale. Some have also suggested that similar outcomes could be achieved without tying exclusively to Passivhaus standard and we would welcome further consideration of how a 'Scottish equivalent' could be designed and implemented.

We would also caution that given the Scottish Government's ambition to deliver 110,000 affordable homes over the next 10 years, it is vital that any change to standards will not result in a shortfall in the new homes which Scotland needs. If the Passivhaus standard, or equivalent, was to be mandated for all new homes it would need to be coupled with further supporting policies to ensure this is deliverable and affordable for our members and their tenants. This includes: increased investment in the Affordable Housing Supply Programme benchmarks; support for the wider supply chain and a clear route map to implementation of new standards; a comprehensive Fuel Poverty Strategy which improves energy affordability in Scotland; and increased investment in local advice services to support the rollout of new technologies.

Q2. Do you think legislation is required, or are there other ways in which the proposed Bill's aims could be achieved more effectively? Please explain the reasons for your response.

We do not believe that primary legislation is the only way in which to deliver the aims of this legislation. For example, it may be possible to further amend existing Building Regulations, to drive improvements and increase quality to achieve the overall policy aim. The changes already planned as part of the revision to Section 6 (Energy), to be implemented for October 2022, offer a steppingstone towards the New Build Heat Standard in 2024 and should help to reduce energy demand and support the rollout of low and zero emission heating across all tenures. However, as noted in the consultation document, there are risks if the 'minimum' standards are not ambitious enough. Some members have expressed concern that developers/contractors will continue to build to the existing minimum standards unless further legislation is introduced.

It should be noted that unlike other sectors, Registered Social Landlords (RSLs) have historically built homes which perform better than the Building Regulations and 'Greener Standard' uplift already applies to Affordable Housing Standard Supply programme benchmarks, providing an additional financial incentive for homes which go beyond the minimum standards. Looking ahead, RSLs are also expected to be delivering zero emissions homes from 2026 ahead of the 2024 standard being introduced across all tenures. Further incentives could also be introduced to reward landlords who are building to the Passivhaus standard, or equivalent.

Q3. Which of the following best expresses your view on setting the Passivhaus standard or a Scottish equivalent as the most appropriate new build housing standards to contribute to eradicating fuel poverty?

Partially supportive

Q3. Which of the following best expresses your view on setting the Passivhaus standard or a Scottish equivalent as the most appropriate new build housing standards to contribute to eradicating fuel poverty?

Please explain the reasons for your response.

For social landlords, decision making around the design of new housing developments needs to consider overall affordability for tenants. This not only includes fuel poverty considerations but also the impact which both the capital costs and ongoing management and maintenance costs will impact rents. While government grants contribute to capital costs, developments still require significant investment from our members funded through rental income. Even where private finance can be accessed, there are limits to how much an RSL can borrow and limits on how much extra tenants can afford to pay to fund this (and maintain over its lifecycle). So while a Passivhaus standard may help to minimise operational energy costs, there is a risk that the increased costs of building to this standard could jeopardise rent affordability.

Our members also have serious concerns about tenants being faced with high energy costs following the shift towards decarbonised forms of heat. Even if new homes can be designed with as low an energy demand as possible, as per the Passivhaus method, this would need to be coupled with further supporting policies to address all four drivers of fuel poverty, including addressing high energy prices. This will require wider energy market reforms to deliver fairness for consumers and improve the affordability of low and zero emission heat solutions.

More broadly, tackling fuel poverty will also require improvements to the social security system to help increase household incomes. Local energy advice services, including those provided by our members, should also receive further investment to help support the rollout of new technologies.

Q4. Which of the following best expresses your view on setting the Passivhaus standard or a Scottish equivalent as the most appropriate new build housing standards to contribute to a reduction in emissions?

Partially supportive

Please explain the reasons for your response.

The Passivhaus approach has the potential to reduce operational energy use and Green House Gas emissions. However, as operational energy demand decreases, the role of embodied energy and associated emissions will become more significant. The Sullivan Report, published over a decade ago, previously called for mechanisms to deliver 'total life' zero emissions buildings while more recently, Scotland's Climate Assembly, as referenced in the current consultation, suggested that whole life carbon costs and environmental impact should be included in building standards within the next 5 years. An approach to measuring whole life emissions would need to be developed to help understand the true impact of such a policy in reducing overall emissions.

Lenders for new affordable housing developments are also now beginning to embed ESG (Environmental, Social and Governance) reporting as a condition of accessing finance and the Sustainability Reporting Standard for Social Housing includes reporting of Scope 2 & 3 emissions under the 'Environmental' reporting criteria, albeit on a voluntary basis at present. These indirect emissions were noted to be out with the scope of the previous review of Section 6 of the Building Regulations. However our members need greater certainty on the expected timescales if this is to be introduced.

Q5. Which of the following best expresses your view of the process set out to ensure that the new standards are met in all new build housing? (see pages 14 to 16 in the consultation document)

Partially supportive

Please explain the reasons for your response, including your views on how effective the process would be in removing the 'performance gap' and on how the proposed verification process might work in practice.

We agree that closing the performance gap is critical in ensuring our homes perform in the way intended and can successfully contribute to addressing both fuel poverty and the climate emergency. We also agree that achieving this will require improvements during both the design and build stage. However, we would

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also suggest that post-occupancy evaluation and support should be considered as an important part of this process to ensure the occupants are able to maximise the benefits of their new home, particularly where unfamiliar technologies are being installed.

In terms of the design stage, some members have expressed concerns about the current use of the Standard Assessment Procedure (SAP) in predicting in-use performance and there have been calls for a more flexible approach which would allow use of a wider range of building assessment tools so long as they adhere to common BS/ISO standards. The Passive House Planning Package (PHPP) would offer a useful alternative in this context.

In terms of the inspection and verification process, we are aware the Scottish Government is already exploring ways to strengthen the Scottish building standards system, particularly for 'high risk buildings'. As raised in our response to the recent consultation on compliance and enforcement we are supportive of increased inspection and verification on site and our members have identified the need for better on-site supervision of contractors as one of the main reasons buildings are not being built to the required standards.

As building owners, our members have a long-term interest in ensuring high quality standards and many employ Clerk of Works to supervise and inspect works on site. Indeed some have argued allocating additional resources for experienced Clerk of Works, could be more cost-effective way of ensuring compliance rather introducing requirements for a Compliance Plan/Compliance Plan Manager (as per the previous consultation).

If specific Passivhaus certification were to become a requirement, as suggested in the current consultation, this would require access to appropriately qualified Passivhaus verifiers. The availability of experienced individuals to take on this new role is unclear given there are already issues with the resourcing of Building Standards departments and a more general skills shortage in the building industry. There would therefore need to be plans in place to ensure a sufficient number of qualified individuals are available to deliver this additional requirement.

Q6. What could be the market effects of the introduction of this proposal?

Given the current supply chain issues which are being experienced in Scotland due to the combination of the COVID-19 pandemic and Brexit, our members are experiencing significant cost increases, material shortages and labour pressures which are already impacting the viability of the current Affordable Housing Supply Programme. A number of SFHA members have seen developments programmes delayed - with some opting not to go out to tender at all for now due to contractors advising them costs are likely to mean projects are not currently viable.

In addition to the wider barriers to new developments, we are aware of cost increases and particular shortages or lengthy lead-in times for products which will be vital to the delivery of Passivhaus design (e.g. radiators, Thermostatic Radiator Valves, insulation, windows, doors, Air Source Heat Pumps and associated infrastructure). While these issues are particularly acute at present, if further standards were to be introduced in the short term, we expect there to be further pressures on supply chains as more new developments seek higher levels of fabric performance and incorporation of low and zero emission heat solutions.

Although air source heat pumps are not a specific requirement for Passivhaus, they are likely to be one of the preferred heating solutions going forward. There are however specific concerns around the experience and confidence with heat pumps, the maturity of the supply chain, and the user friendliness of these new technologies. We note that the UK Government is launching a 'Heat Pump Ready Programme' to support innovation and improve consumer experience, as well as committing to making heat pumps no more expensive to buy and run than gas boilers by 2030. However, this does not align with the proposed timescales in Scotland and we would like to see further action to ensure social housing tenants are protected from unaffordable energy costs or being negatively impacted by the rollout of new technologies.

We note that the Scottish Government has committed to producing a Heat in Buildings Supply Chain Delivery Plan by Summer 2022 in addition to a Heat in Buildings Workforce Assessment Project. We would like to see this work address some of the reported concerns and ensure adequate supply chains and a skilled workforce are in place to support the delivery of 'net zero' homes.

Given the current pressures on supply chains in both construction and maintenance, it may also be an opportune time to begin a conversation about the long-term future and sustainability of construction in Scotland, exploring how we can build native, shorter supply chains for key materials, and, for example, investing in Modern Methods of Construction. It is vital that we consider the overall impact of the

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procurement of building materials on the environment and Scottish Government's wider ambitions to move towards a wellbeing economy. As anchor organisations in many communities, housing associations work tirelessly to ensure investment stays in the local economy, and it will be vital to build supply chains that allow this work to continue.

Financial Implications

Q7. Any new law can have a financial impact which would affect individuals, businesses, the public sector, or others. What financial impact do you think this proposal could have if it became law?

some increase in costs

Please explain the reasons for your answer, including whom you would expect to feel the financial impact of the proposal, and if there are any ways you think the proposal could be delivered more cost-effectively.

Overall, there are an increasing number of competing demands for RSL funds due to the cumulative impacts of regulatory standards and broader economic factors such as rising interest rates, cost of living increases and the ongoing energy crisis. Social housing tenants are also struggling financially due to the ongoing impacts welfare reform, including the withdrawal of the £20 Universal Credit uplift and the ending of the furlough scheme. At the same time there is, rightly, pressure to keep rents affordable. It is important that any new standards are considered in this wider context.

In looking at the specific costs of Passivhaus, the consultation document reports that this will increase capital costs by around 4 to 8%. This compares to the 5 to 7% cost increase reported for the 'advanced' standard for Section 6, which also showed a potential net cost at a national level. However, we are aware of modelling by Homes for Scotland which suggests increases of closer to 15% even for the 'improved' standard. Our previous 'Cost of Compliance' report (<https://www.sfha.co.uk/news/news-category/sfha-news/news-article/sfha-publishes-findings-of-research-into-the-rising-costs-of-development>) also suggests that the introduction of ambitious local design standards, such as the Glasgow Standard, is increasing costs by between 5–10% and 13–15%, whilst building to the Passivhaus standard can add 17.3% to the cost of a typical two-bedroom property.

Although many RSLs have already been delivering new affordable housing developments which meet the Greener Standard and incorporate air-source or ground-source heat pumps and heat networks, these systems do have higher capital costs. A previous evaluation (<https://www.gov.scot/publications/evaluation-renewable-zero-emissions-heating-systems-affordable-housing-projects/pages/6/>) of affordable housing projects in Scotland found that low and zero carbon technologies were between £2,000 to £5,000 more expensive per unit than the default option of a gas boiler with solar PV.

Aside from the specific costs associated with improved energy performance, our previous 'Cost of Compliance' report also details the increasing development costs being experienced by our members across the board. Even prior to the more acute challenges being faced at present due to COVID-19 and Brexit, it was estimated that tender prices had increased by up to 40–45% over a period of only five years. With the combination of increasing development costs, we have concerns about the impacts on the businesses case for new affordable housing projects. Unless adequate levels of investment funding are in place, the scale and pace of delivery of the overall Affordable Housing Supply Programme will be under threat. This is particularly important for Scotland's rural and island areas which have historically faced higher development costs. It is vital that our members are able to play their part in delivering the government's target of 110,000 affordable homes over the next 10 years and we would reiterate the need for any cost increases associated with meeting new standards, and more general cost increases, to be appropriately reflected in the Affordable Housing Supply Programme benchmarks.

On the other hand, there may be financial savings – both to individual households if the reduced energy demand results in lower energy costs and in the wider societal benefits. For example, one of our members has already reported improvements to tenant health and wellbeing, linked to living in a more comfortable home which could in turn result in cost savings for the NHS. While more difficult to fully quantify, SFHA has previously published research showing how these types of social value metrics can be calculated to demonstrate social and economic benefits (<https://www.sfha.co.uk/mediaLibrary/other/english/66627.pdf>).

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If we were to move towards a Passivhaus standard, it may require a fresh look at the way in which Scottish Government assesses the cost, and value, of investment in affordable housing to ensure sufficient investment is provided to deliver such long-term benefits.

Equalities

Q8. Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

What impact could this proposal have on particular people if it became law? If you do not have a view skip to next question.

Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.

No Response

Sustainability

Q9. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations.

Do you think the proposal could impact in any of these areas? If you do not have a view then skip to next question

Please explain the reasons for your answer, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?

No Response

General

Q10. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

No Response