

Building Standards Division

CONSULTATION REPORT

Building Warrant Fees

Optimal Economics Ltd.

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EXECUTIVE SUMMARY

1. The Scottish Government (SG) sought comments from stakeholders and users of the building standards system in Scotland on proposals to make changes to Building Warrants and related fees. The changes involve increases in certain fixed and minimum fees and changes to the fee scales. The aim of the changes would be to increase fee income by around £3.5 million per annum. Of this sum £2 million would be used to improve the service provided by Local Authority verifiers and £1.5 million would be used to fund Building Standards Division. In this way users of the system would meet all of its costs.
2. The consultation was published on the SG Consultation Citizen Space portal and ran from 15th November 2016 until 9th January 2017. It was notified to 622 identified organisations and individuals and was promoted on the SG Building Standards Division (BSD) website as well as being highlighted in the Building Standards e-newsletter issued to 8,823 registered e-news recipients.
3. Responses were received from 123 persons and organisations. These were categorised as follows.

Respondent Category	Number	Percentage (%)
Local Authority – Organisation	28	23
Local Authority – Individuals	9	7
Designer/Consultant	57	46
Advisory Body/Committee/Agency	1	1
Builder/Developer	9	7
Industry Association	3	2
Professional Body	1	1
Other/Representative Organisation	2	2
Warranty Provider	1	1
Certifier	2	2
Community Group	1	1
Individuals/Not specified	9	7
Total	123	-

4. The consultation set out five specific questions and also asked for any additional comments.
5. The first question asked whether respondents supported the principle that building warrant and associated fees should be increased to make the Scottish Building Standards system achieve full cost recovery. This proposition received strong but qualified support with 41% of all respondents supporting the proposal outright and 32% offering conditional or qualified support. Those who gave conditional support did so on the condition that the fee increases would definitely be applied to and produce service improvement. Comments made in response to this question by many respondents stated that the performance of the Building Standards service was deteriorating.

6. There was a sharp divide in response to this question between Developer/ Builders (and their industry body) and other respondents. A majority of this group's responses (five out of nine) argued that no increase in fees was needed at all as the service was already adequately resourced and that any resource problems arose from inefficiency or from fee income being applied to local authority activities unconnected with verification of Building Standards.

7. The second question asked whether respondents agreed that fees for building warrant applications (minimum fixed fee and incremental steps) and fixed fees for amendment to warrant applications, demolition, conversion etc., be increased as described in the proposals in the consultation document.

8. There was majority support (including qualified support) for the specific fee proposals set out in the consultation overall and in all groups except Developers/ Builders where 64% were opposed. Over 90% of local authority respondents supported the specific proposals. If local authority responses are excluded the balance of support for the proposals is dependent on qualified support. Thus 39% of these respondents supported the proposals, 44% were opposed and 17% gave qualified support. As before, those who gave conditional support did so on the condition that the fee increases would definitely be applied to and produce service improvement.

9. The third question asked whether respondents agreed that discounts for using a certifier of design or construction should be increased. This proposition was supported by a majority of respondents in all categories.

10. The fourth question asked whether fees for those who have undertaken unauthorised work should be increased. This proposition was given support by 81% of respondents and qualified support by 11%. A majority of respondents in all categories supported this proposition.

11. The fifth question was "Are there any alternative options to achieve full cost recovery that should be considered?". This question was answered by a minority of respondents. Most Developers/Builders argued that fees were already adequate to resource the service. A range of other responses were provided by individual respondents within which the main themes related to new types of fee, more centralisation of services and involvement of the private sector in verification.

12. In response to the invitation to make other comments, responses were made by 65 respondents. These responses were wide ranging and not all related to fees. The main themes were that:

- the Developers/Builders and their industry body called for a fundamental review of the system and involvement of the private sector;
- a number of local authority respondents were concerned over lack of clarity concerning the means by which fees would be channelled to BSD or were completely opposed to fees being used in this way; and
- urgent action was needed to improve the quality of performance of the Building Standards service.

1. INTRODUCTION

Verification of compliance with building regulations is currently undertaken by the 32 Scottish local authorities in their role as Verifiers and each authority is responsible for verification in their own geographical area. Verifiers grant building warrants and accept completion certificates when they are satisfied that construction work complies with the building regulations under the Building (Scotland) Act 2003 (The Act). Statutory fees are set out in The Building (Fees) (Scotland) Regulations 2004.

It is expected that income from fees should cover the costs of the Verification service and that the costs of Verification and the fees paid should be closely aligned.

The fees structure has not changed since 2004 and while it can be argued that average fees paid have increased because they are related to the value of work, this is not true for fixed fees.

In addition, there have been significant changes that have impacted on the process of verification and the likely costs of verification since the fee structure was last altered. Recent research conducted for BSD suggests that for some local authority Verification services the level of income from fees is a contributing factor to under-resourcing of verification work.

Another consideration is that the current fee discounts where warrant applications are accompanied by submission of certificates of design and construction neither reflect the comparative costs of verification nor provide a clear incentive to use Certification.

The Scottish Government is also seeking to introduce an alternative funding mechanism to recognise the role of Building Standards Division (BSD) in supporting the building standards system. The aim is to pass the whole cost of managing and maintaining the building standards system (by BSD and local authority Verifiers) to the users of the system.

In the light of the above considerations, the Scottish Government published proposals for a new set of fee scales. The new scales were designed to generate additional income of £3.5 million which would be divided between an increase of £2 million in Verifier income and £1.5 million to fund BSD.

The key features of the proposals are:

- **Application for building warrant with a minimum value of up to £5000**
The proposal is to increase the minimum fee from £100 to £150.
- **Application for building warrant with a value of £5,001 and up to £20,000**
The proposal is to increase the incremental step increases by £4 (£15 to £19).
- **Application for building warrant with a value of £20,001 or more**
The proposal is to increase the incremental step increases by £3 (£60 to £63, £100 to £103, £175 to £178, £250 to £253).

- **Application for a conversion only**
The proposal is to increase the fixed fee from £100 to £150.
- **Application to extend the validity of a building warrant (beyond 3 years)**
The proposal is to increase the fixed fee from £50 to £100.
- **Application for amendment to building warrant (value of additional work up to £5,000)**
The proposal is to increase the minimum fee from £50 to £100.
- **Application for amendment to building warrant for conversion or demolition only**
The proposal is to increase the fixed fee from £50 to £100.
- **Application for a building warrant to demolish only**
The proposal is to increase the fixed fee from £100 to £150.
- **Applications for Late Building Warrants**
Fee is increased from 125% to 200% of the normal building warrant fee.
- **Application for late warrant for demolitions only**
Fee is increased from £125 to £200.
- **Submission of a completion certificate where no warrant was obtained for construction of a building or the provision of services, fittings or equipment**
Fee is increased from 125% to 300% of the normal building warrant fee.
- **Submission of a completion certificate where no warrant was obtained for demolition or conversion**
Fee is increased from £125 to £300.
- **Certifiers of design**
Discount retained at 10%, with discounts for up to £100,000 value of work increased by introducing minimum fixed amounts.
- **Certifiers of construction**
Discount increased from 1% to 3% with discounts for up to £100,000 value of work increased by introducing minimum fixed amounts.

The purpose of the consultation reported here was to seek views on the above proposals to increase warrant and other associated fees

2. THE CONSULTATION PROCESS

The consultation ran from 15 November 2016 until 9 January 2017. The consultation was notified to 622 public, private sector and third sector organisations, Non-departmental public bodies (NDPBs), individuals and other interested parties identified and listed on the BSD consultation database. The consultation documents were published on the SG website and available as an electronic download, with paper copies available if requested

It was promoted on both the SG Building Standards website and in the Building Standards e-newsletter issued to 8,823 registered e-news recipients.

All were invited to submit comments on the proposals made in the consultation paper by 9 January 2017.

In total there were 123 responses classified as follows:

Respondent Category	Number	Percentage (%)
Local Authority – Organisation	28	23
Local Authority – Individuals	9	7
Consultants/Designers/Architects	57	46
Advisory Body/Agency	1	1
Developer/Builder	9	7
Industry Association	3	2
Professional Body	1	1
Other Representative Organisation	2	2
Warranty Provider	1	1
Certifiers	2	2
Community Group	1	1
Individuals/Not specified	9	7
Total	123	100

3. CONSULTATION RESPONSES

Five specific questions were put to respondents. A sixth question asked for any other comments.

4. ANALYSIS

The consultation asked if the building standards system should move to a cost recovery system.

In addition to this a number of respondents offered comments or suggestions on the detail of the proposals. All comments received were fully considered when determining the way forward in respect of this proposal.

Not all respondents responded to all questions. Moreover, there was clear divergence between the responses of particular groups in the consultation that would mean an overall count of responses, such as would normally be set out in a report of this type, could be misleading. Therefore, the summary tables of responses to each of the questions which are set out below divide the responses into three groups which are:

- Local authority (organisations and individuals)
- Consultants/designers
- Developers/Builders
- Industry bodies
- All others

While the consultation form provided, as noted above, for additional comments, many respondents, qualified their responses to the specific questions. The points of qualification and amplification are, therefore, discussed below after each question.

5. FINDINGS

The various responses to the consultation were considered and assisted in informing the decisions made with regard to each specific question as follows:

Question 1

Should building warrant and associated fees be increased to make the Scottish Building Standards system achieve full cost recovery?			
Responses	Yes	Qualified Yes	No
Local Authority			
37	19 (51%)	18 (49%)	0
Consultants/Designers			
57	23 (40%)	11 (19%)	23 (40%)
Developers/Builders			
9	0	4 (44%)	5 (56%)
Industry Bodies			
3	0	2 (66%)	1 (33%)
Others			
17	9 (52%)	4 (24%)	4 (24%)
Total			
123	51 (41%)	39 (32%)	33 (27%)

There was majority support (including qualified support) for the proposals set out in Question 1 in all groups except Developers/Builders.

Those local authority respondents who qualified their “Yes” answers did so in almost all cases because they did not support the use of Building Warrant income to support BSD.

These respondents argued that BSD should be centrally funded. Several local authority respondents further argued that the mechanism by which a fluctuating income would be split between local authorities and BSD was unclear and that local authorities might have to bear the brunt of any fee shortfall in a downturn. Others argued that their authority's share of an increase in income of £2 million would be insufficient to fund a material improvement in service.

Among consultants and designers opinion was evenly divided between the "unqualified" "Yes" and "No" answers. Those that gave a qualified "Yes" indicated that this was conditional on assurances that service delivery, which was very widely criticised and especially in relation to speed, was improved. Even among those who gave a clear positive response there was a desire for assurance that increased fees would go to Building Standards. The respondents who answered "No" generally argued either that efficiency could be improved or that the service did not merit higher payment.

Among the builders the "Yes" responses (the minority) were subject to very heavy qualification that the service would need to improve and possibly incorporate statutory response times. Four of the "No" responses used identical text which was also used by an industry body. These responses argued that the fee structure was already adequate to make the system self-financing, that the basis of verification costs lacked transparency and that income was not ring fenced so that fees might be supporting council budgets. These submissions also rejected the proposal that fee income should support the work of BSD.

The two industry bodies which supported the principle of increased fees did so only on the basis that increased fee income would be applied to service improvement and that the service would improve. The body which rejected the proposals did so in the same terms as the developers discussed above.

The "others" included private individuals, representative organisations and a warranty provider. Those who gave a qualified yes wanted to be assured that the fee increases were correctly calculated in terms of service costs and that service improvements would follow. One respondent in this group argued that fees for plan checking and inspection should be separated.

Considerations and SG Response

We note that there was strong but qualified support for this proposal and that those responding with a qualified 'Yes' have significant concerns about the current verification service being received. In order to advance progress in this area, we will introduce measures to set minimum operational requirements for verifiers from 1 May 2017. We will also monitor verifiers' performance and support improvement to the verification service delivery. Such improvement in verification service and the ability to successfully monitor progress will need additional resource, so we will introduce full cost recovery as outlined in the proposal.

Question 2

Should fees for building warrant applications (minimum fixed fee and incremental steps) and fixed fees for amendment to warrant applications, demolition, conversion etc., be increased as described in the proposals?			
Responses	Yes	Qualified Yes	No
Local Authority Respondents			
36	33 (93%)	1 (3%)	2 (6%)
Consultants/Designers			
57	24 (42%)	9 (16%)	24 (42%)
Developers/Builders			
9	1 (11%)	2 (22%)	6 (64%)
Industry Bodies			
3	0	2 (66%)	1 (33%)
Others			
15	8 (53%)	1 (7%)	6 (40%)
Total			
121	66 (55%)	15 (13%)	39 (32%)

There was majority support (including qualified support) for the specific fee proposals set out in the consultation in all groups except Developers/Builders.

Support for the specific proposals from local authority respondents was very high. One of the “No” answers stated that a lower increase based on the funds required for local authorities only should be implemented while the other argued for fees based on floor area of projects. The qualified “Yes” answers involved a proposed further increase for demolition fees.

The responses of consultants to the specific proposals generally reflected their answers to the first question. However, it should be noted that two of the respondents classified as “No” in response to question 1 did support inflation linked increases to fixed fees only. The responses of developers to the specific proposals generally reflected their answers to the first question. Support was conditional on service improvements. However one developer who had been supportive of the general principle considered that fees for small projects and other fixed charges should not increase.

The representative bodies giving a qualified “Yes” to the specific proposals sought assurances over service quality.

Among the “Others” group the specific proposals were supported by most respondents. Reservations related to the proposals were about service quality. Those rejecting the specific proposals were divided between respondents completely opposed and those rejecting the specific scales: some argued that there should be less cross-subsidy from large projects while others objected to large increases at the lower end of the scale.

Considerations and SG Response

There was good support on the detail of the proposal, when those responses which gave a qualified 'Yes' were taken into account. Again noting concerns raised about performance (see Scottish Government observations on Q1), we will introduce the fixed fees and incremental steps which were supported by the respondents. We acknowledge that the proposals did not take account of inflation and confirm that this will be work for the future.

Question 3

Should discounts for using a certifier of design or construction be increased?			
Responses	Yes	Qualified Yes	No
Local Authority			
37	21 (57%)	2 (5%)	14 (38%)
Consultants/Designers			
48	34 (71%)	0	14 (29%)
Developers/Builders			
9	7 (78%)	0	2 (22%)
Industry Bodies			
2	2 (100%)	0	0
Others			
14	8 (58%)	3 (21%)	3 (21%)
Total			
110	72 (65%)	5 (5%)	33 (30%)

There was support for increased discounts across all types of respondent. The qualified “Yes” responses from Local Authorities supported increased discounts for Certificate of Construction but not of Design. Support for the principle of increased discounts did not necessarily mean that in all cases there was support for specific proposals (i.e. fixed value discounts).

A number of consultants (11) did not give specific answers to the question but some of these did comment on the complexities involved in the issue, for example in ensuring that certification did reduce the burden on verifiers.

The qualified “Yes” answers from “others” said that discounts should be increased only if cost effective and not detrimental to the financial position of local authority Verifiers.

Considerations and SG Response

We note that there was strong support for increasing discounts for certifiers of design or construction. We will introduce an increase in discounts as outlined in the consultation. We will monitor the effect that discounts have on the financial position of verifiers and whether certification does reduce the burden on verification work.

Question 4

Should fees for those who have undertaken unauthorised work be increased?			
Responses	Yes	Qualified Yes	No
Local Authority			
37	36 (97%)	0	1 (3%)
Consultants/Designers			
52	38 (73%)	8 (15%)	6 (12%)
Developers/Builders			
4	3 (75%)	1(25%)	0
Industry Bodies			
1	0	1 (100%)	0
Others			
16	12 (75%)	2 (12.5%)	2 (12.5%)
Total			
110	89 (81%)	12 (11%)	9 (8%)

The proposal to increase fees for unauthorised work was supported across all categories of respondent.

Almost all local authority respondents favoured increases in fees for unauthorised work. A clear majority of Designers, Consultants and Developers favoured higher fees for unauthorised work. Most of the qualified “Yes” answers from this group argued that higher charges should not be levied if people had lodged applications and waited an unreasonable time for a warrant to be granted.

The qualified responses from the “other” respondents argued that fees for unauthorised work should be raised only where the work was substandard while the only response from an industry body argued that “penalty” fees should be considered case by case. The qualified “Yes” from a developer argued that increased fees should not be applied if the person had lodged an application but had begun work before the warrant was issued.

Considerations and SG Response

We welcome the overwhelming support for this proposal, and in effect the endorsement given by respondents for the ‘pre-emptive’ building standards system. It is recognised that verification is normally more convoluted where work has commenced on site or has been completed without approved drawings and specifications, so we will introduce an increase in fees in line with the consultation proposals.

Question 5

Are there any alternative options to achieve full cost recovery that should be considered?

This question was answered by a minority of respondents. The suggestions made were as follows:

- Various proposals were made to increase fees further. Most of these proposals came from 10 local authority respondents. The specific suggestions were:
 - To levy cost recovery fees where structural calculations are submitted (this proposal was also supported by a professional body)
 - To charge a fee for initial discussions with an applicant
 - Replacement of discounts for certification with penalties for applications not supported by certification (this was also supported by a Certification body and two consultants)
 - Additional charges where applicants seek “a view” when in dispute with the authority
 - Additional charges where applications are supported by insufficient or inadequate information or drawings
 - Charges where additional inspections are needed, and
 - Penalties for non-compliance with standards
- It was suggested by one consultant and one local authority respondent that a centralised (national) service would be more efficient.
- Several consultants stated that the Building Standards system could be made more efficient and cost effective by allowing private verifiers to compete for this work. This view was supported by some house-builders.
- Five of the house-builders made submissions on this point which were identical and which were the same as that submitted by their industry representative body. These argued that there was no need to increase cost recovery and suspected that income from Building Standards was cross-subsidising other services. They argued that a fundamental re-examination of the Building Standards system was called for. They also suggested that a more centralised system integrated with planning services would be more efficient.

Considerations and SG Response

We value the various observations and comments given by the respondents on various arrangements for recovering costs. After giving them due consideration, we consider that introducing additional fees for different services will add a level of intricacy that could be counter-productive. On balance, we think that the proposals within the consultation are fit for purpose and at this stage, there are no alternative arrangements that will produce a significantly better outcome.

6. ADDITIONAL COMMENTS RECEIVED

Additional comments (excluding those repeating points made in the previous section) were made by 65 respondents. These are summarised below. Where the same point was made by several respondents this is noted.

House builders

- Five house builders and their industry body made the same submission under this head. They argued that the Building Standards service, while varying from area to area, is generally poor and deteriorating. They argued that the performance framework is not driving improvement. They noted that recent Scottish Government research indicated deteriorating performance.
- The above group also argued that fees for large housing projects were far in excess of the cost of verification and that this was unjustified.
- The above group also stated that the STAS system was not operating well with some authorities refusing to accept such applications.
- The group expressed scepticism about the ability of e-building standards to increase efficiency but accepted that more time was needed before a judgment could be made.
- While accepting that Local Authorities should be re-appointed as Verifiers in 2017, the group argued that some private sector involvement in verification work, regulated by the Scottish Government, should be introduced.

Local Authorities

- Concern over the proposal to use part of the increased income to fund BSD was expressed by a number of local authority respondents. Four local authority respondents rejected the proposal outright. Eleven local authority respondents and one non local authority body argued that not enough detail had been provided on how the system for allocating fee income to BSD at the local authority level would operate. There was concern that in the event of a downturn in activity the payment to BSD might not be reduced.
- Several local authority respondents were concerned that their authority's share of the projected fee increase would be too small to have much impact. There was also a view that ensuring any increased funds were retained by Building Standards and specifically applied to staff development/recruitment would be very important.
- Several local authority respondents expressed concern over loss of senior staff, over staff recruitment and in relation to the limited availability of relevant training. It was suggested by three respondents that these matters were relevant to consideration of the resource needs of Building Standards.
- One respondent suggested that a process of regular fee reviews should be introduced to put Building Standards on a more secure footing.
- Two local authorities expressed opposing views on the merits of splitting warrant fees and scales between plan checking and inspection.

- One local authority respondent was concerned that introducing private sector verifiers would lead to a loss of income from large projects with adverse effects on the financial position of local authority verifiers.
- Two local authority respondents made detailed proposals, generally consistent with the principles in the consultation, for fees for extensions to warrants and completion certificates where no warrant was obtained.

Others

- Three respondents argued that Building Standards is a public service which should not be self-funding.
- The view that BSD should be funded by central government was also supported by non-local authority respondents.
- One respondent was concerned that increased fees might be absorbed into other local government spending and asked if “ring fencing” was possible.
- One organisation argued that warrant fees are a trivial cost for big projects and could be increased.
- One respondent argued that fees from applicants who follow the rules should not be paying for work to deal with those who don’t comply.
- Comment on the poor or deteriorating quality of service from Building Standards was made by nine respondents. This was attributed mainly to resource issues. Linked to this were various suggested remedies:
 - Two respondents suggested use of outside consultants or private verifiers
 - Two respondents argued that efficiency could be increased
 - One echoed the views of builders reported above that a fundamental review was needed
 - One person argued for a national system
 - Three respondents stated that there is a lack of consistency between authorities in demands for information to support applications. These demands were said to be increasing which was attributed by one respondent to staff shortages.
 - Expansion of the use of certification was supported by four comments with three comments arguing for further incentives.
 - Two respondents commented on e-building standards: one said there were serious teething problems and one said the portals were good.
 - One respondent argued for simplification of regulations (especially for domestic work) which had become too complex.
 - One respondent stated that procedures relating to the life of warrant extensions should be standardised between authorities.
 - One respondent called for more guidance on standard costs of works (comparable to BCIS) to inform the cost of works estimates used in setting fees.
 - One respondent stated that the lack of a requirement for qualifications on the part of designers/contractors was a cause of substandard work.
 - One respondent described the CCNP process as involving unnecessary and unhelpful inspections.
 - One respondent argued that all projects should have a Clerk of Works to provide the quality assurance which was not the role of Building Standards.

Considerations and SG Response

We note and appreciate the additional comments made by respondents. Whilst some have relevance to this consultation, many will help inform future work of the Building Standards Division. Particular themes identified were:

- A fundamental review of the building standards system and where the role of the private sector may lie.
- The action needed to improve the quality of the verification service.
- Clarity on how the Building Standards Division proportion of the building warrant fee increase would be channelled to Scottish Government.

7. CONCLUSIONS

House builders argued that no increase in fees was needed at all as the service was already adequately resourced and that any resource problems arose from inefficiency or from fee income being applied to local authority activities unconnected with verification of Building Standards. As mentioned previously, with the next appointment of verifiers we will examine how local authorities use the building warrant fee income and make sure that fees paid for the verification process are not subsidising other building standards or council wide services.

A number of respondents, particularly COSLA and some local authorities, were concerned over lack of clarity concerning the means by which fees would be channelled to BSD or were completely opposed to fees being used in this way. Others suggested that their authority's share of an increase in income would be insufficient to fund a material improvement in service. In response, we intend to work with COSLA and local authorities to reach a transparent and equitable solution for the transfer of part of an applicant's building warrant fee to support the running costs of BSD. We also intend to set out how BSD intends to use this resource in support of the building standards system.

The overall proposition to increase building warrant fees received strong but qualified support with 41% of all respondents supporting the proposal outright and 32% offering conditional or qualified support. Those who gave conditional support did so on the condition that the fee increases would definitely be applied to and produce service improvement. In recognition of this we will introduce measures to set minimum operational requirements for verifiers from 1 May 2017. We will also monitor verifiers' performance and support improvement to the verification service delivery. Such improvement in verification service and the ability to successfully monitor progress will need additional resource, so we will introduce full cost recovery as outlined in the proposal.

8. NEXT STEPS

Scottish Government welcomes the responses to the consultation and note the support for the principle that building warrant and associated fees should be increased to make the Scottish Building Standards system achieve full cost recovery. The proposed changes will be implemented as part of a package of legislative changes planned for spring 2017.