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Ariane Burgess MSP
Convener
Local Government, Housing and Planning
Committee

13 January 2025

Dear Ariane,

Building (Procedure) (Scotland) Amendment Regulations 2024

As your letter of 19 December indicates, The Building (Procedure) (Scotland) Amendment Regulations 2024 were laid on 12 December as part of a two-stage review with the July 2024 consultation and laying of regulations in December forming the first stage. The second stage will consult this summer on the non-legislative changes needed with an updated set of Technical Handbooks and the necessary compliance tools being made available in 2026.

The second stage of the review will build on the July 2024 consultation and continue the work of the Scottish Equivalent to the Passivhaus Working Group and current research to focus on a number of key themes.

It is perhaps useful to restate the outcomes sought from this review, as set out in the stage 1 consultation.

- Improvements to the setting of energy performance and ventilation standards for new buildings, leading to lower energy demand (and reduced running costs) and assurance of a healthy indoor environment.
- Improvements to the design and construction process to give greater assurance that compliance, and therefore the performance sought, is delivered in practice.
- A level of action, deliverable at a national level, which reflects the needs of building users and strategic policy objectives around climate change, energy policy and the built environment.

The consultation made it clear that these outcomes do not rely on a simple adoption of the Passivhaus standard but on the implementation of relevant learning from it, as an

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established design standard, within the existing system of national regulation which sets minimum standards for new buildings.

Part 2 of the Scottish Government response to the stage 1 consultation will set out workplan topics to be taken forward and developed in more detail. This will consider and offer commentary on the responses to the range of questions on the principles and composition of a Scottish equivalent to the Passivhaus standard. We expect this to be published in late January 2025.

To deliver the review, the following areas of work are being progressed.

Scope for improved performance in new buildings

An assessment of the capacity for further improvement in overall building energy performance targets, deliverable at a national level. These were most recently updated in February 2023.

Research on improvement options for new homes is close to completion; similar work for new non-domestic buildings has recently been confirmed for completion in June 2025. This includes a comparison and analysis of the outcomes reported by the application of current, proposed and Passivhaus calculation methodologies.

Approved calculation methodology for Standard 6.1

Current overall energy targets require to be set and demonstrated for new buildings under standard 6.1 (energy demand). Compliance is demonstrated through the use of the Standard Assessment Procedure (SAP) for new dwellings and the National Calculation Methodology (NCM, Simplified Building Energy Model (SBEM)) for new non-domestic buildings.

Work will continue in the early part of 2025 to develop updated compliance tools, considering the updated UK methodologies. This work also will report on the comparative outcomes from the current proposed tools and the Passivhaus Planning Package (PHPP), the design tool used during the Passivhaus certification process.

A commitment is already made to recognise Passivhaus certification as an alternative to demonstrating compliance with standard 6.1 (energy demand). This would be made by amendment to The Building (Scotland) Regulations 2004 in the second half of 2025.

Overall building energy targets and fabric standards

Current building regulations set an overall energy target under standard 6.1 (energy demand). This target is a delivered energy target. It considers only the energy used arising due to components of the building – fabric and fixed building services. Targets are set by applying a ‘notional building’ specification to a building the same size, shape and orientation as the proposed building. In this respect, the target set is a relative target, varying with the type and form of building proposed.

Building regulations set maximum recommended thermal (‘backstop’) values for elements of the building insulation envelope through guidance to standard 6.2 (building insulation envelope). This defines the general level of expectation in limiting heat loss. That level is set

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to enable a degree of flexibility in the delivery of cost-effective levels of fabric performance that are viable for projects across Scotland.

Work will continue in 2025 to confirm the updated delivered energy demand targets that are to be consulted on in the second stage consultation. We will also work with the Working Group and other industry stakeholders to investigate the viability of applying key elements of the Passivhaus approach to target setting, including the use of absolute targets (numerical values applied regardless of building type, form or location), use of local climate data, absolute space heating targets, an overall energy use intensity target (which includes energy used for cooking and plug-in appliances) and very good envelope airtightness limits.

Design and construction compliance statements

The Building (Procedure) (Scotland) Amendment Regulations 2024 introduce a requirement for developers to provide “an energy and environmental design statement” with building warrant applications and an “energy and environmental construction statement” with each completion certificate. These statements will describe how the design and construction of the building complies with a number of paragraphs of schedule 5 of the Building (Scotland) Regulations 2004.

Development of an evidence-based compliance process for both the design and construction of new buildings, drawing on current good practice for quality assurance, including the procedures applied in validating Passivhaus certified projects.

This will define the approach taken to deliver the design and construction stage statements introduced by the December 2024 regulations. Work is being led by the Scottish Futures Trust with input from both the wider construction sector and the review Working Group.

Work will continue, prior to the second stage consultation to set out, in guidance, the expected action by the applicant/relevant person to demonstrate the means by which compliance with the relevant standards is assured at each stage of a project.

This work will also tie in with broader work on the Compliance Plan Approach being developed under the Building Standards Futures Board.

Delivery timetable

The responses to specific questions on such topics will inform the next stages of the review. Further meetings of the review Working Group are scheduled for 6 February, 28 March and 29 May 2025.

The current implementation date for The Building (Procedure) (Scotland) Amendment Regulations 2024 is March 2028. The Scottish Government has indicated to stakeholders, and during the July 2024 consultation, that guidance and compliance methodologies, capturing the outcome of the above review topics, will be available in early 2026 to enable the construction sector to prepare for the changes in 2028.

It would be my intention to provide an update report to the LGHP committee following analysis of the responses to the stage two consultation and reporting to me by officials, to confirm the full extent of provisions which will be taken forward and any further legislative change beyond that noted above.

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Please get in touch if the committee require any further information at this stage.

Yours sincerely,

PAUL MCLENNAN

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Useful links to current published information on the review so far

[Energy Standards Review - Scottish Passivhaus Equivalent: Working Group](#)

[Stage One Consultation Paper](#)

[Stage One Consultation Responses](#)

[Stage One Consultation Analysis Report](#)

[Stage One Consultation Scottish Government Response – Part 1 \(legislation\)](#)

[The Building \(Procedure\) \(Scotland\) Amendment Regulations 2024 - Legislation](#)

[The Building \(Procedure\) \(Scotland\) Amendment Regulations 2024 - Policy Note](#)

[Stage One Consultation Final Business and Regulatory Impact Assessment](#) *

[Stage One Consultation Island Communities Impact Assessment](#) *

[Stage One Consultation Child Rights and Wellbeing Impact Assessment](#) *

[Stage One Consultation Equalities Impact Assessment Results](#) *

* Published with SSI, publication on SG website pending.

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