

Local Government, Housing and Planning Committee
Tuesday 21 January 2025
2nd Meeting, 2025 (Session 6)

SSI 2024/376: The Building (Procedure) (Scotland) Amendment Regulations 2024

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 5 February. The Committee is invited to consider the instrument and decide what, if any, recommendations to make, or alternatively, whether it wishes to take oral evidence on the Regulations at a future meeting.
2. Further information about the instrument is summarised below:

Title of instrument: [The Building \(Procedure\) \(Scotland\) Amendment Regulations 2024 \(SSI 2024/376\)](#)

Laid under: powers conferred by sections 24(2) and 33 and schedule 3 of the Building (Scotland) Act 2003.

Laid on: 12 December 2024

Procedure: Negative

Deadline for committee consideration: 3 February 2025

Deadline for Chamber consideration: 5 February 2025

Commencement: 31 March 2028

Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated

at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Purpose of the instrument

7. According to the accompanying [Policy Note \(Annexe A\)](#) the purpose of the Regulations is to—

“...ensure that information demonstrating how compliance with mandatory standards setting requirements for the energy and environmental performance of building work is provided. To require the issue of such information to the local authority verifier in respect of building design, on submission of an application for building warrant or application for amendment of building warrant and in respect of construction, on submission of a completion certificate.”

8. The Policy Note further explains that—

“In December 2022 the then Minister for Zero Carbon Buildings, Active Travel and Tenants’ Rights confirmed that, in response to Alex Rowley MSP’s Proposed Domestic Building Environmental Standards (Scotland) Bill, the Scottish Government would make subordinate legislation by 14 December 2024 to give effect to Mr Rowley’s final proposal “to introduce new minimum environmental design standards for all new build housing to meet a Scottish equivalent to the Passivhaus standard, in order to improve energy efficiency and thermal performance”.

9. A two-stage review is underway, with the first stage having already consulted on the principles behind such a change to standards and the regulatory change needed to enable the setting of such standards. A second stage will consult on the non-legislative changes needed to deliver such a change in practice through the building standards system. This instrument is made in response to the outcome of the first stage of the review.

10. The following impact assessments have also been published alongside the Regulations:

- [Child Rights and Wellbeing Impact Assessment](#)
- [Island Communities Impact Assessment](#)
- [Equality Impact Assessment](#)

- [Business and Regulatory Impact Assessment](#)

Written submissions

11. The Committee [agreed at its meeting on 17 December 2024](#) to write to stakeholders on the regulations. It issued a call for views on 19 December 2024 inviting stakeholders to respond to questions on the Regulations. 30 responses were received and can be accessed on [the Committee's website](#). SPICe researchers have provided a summary of written submissions which is attached at Annexe B.
12. The Minister for Housing also responded to [a letter](#) from the Convener on 13 January providing [further information on the Scottish Government's plans](#), including key themes that are expected to inform the second stage of the review. The letter is attached at Annexe C.
13. The letter confirms that:

“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.”

14. The Minister's letter further states that he intends 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.”

Delegated Powers and Law Reform Committee consideration

15. The DPLR Committee [reported on the instrument after considering it at its meeting on 7 January](#). The DPLR Committee's report confirmed that it had no points to raise on the instrument.

Committee consideration

16. So far, no motion recommending annulment has been lodged.
17. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:

LGHP/S6/25/2/5

- seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
- inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

18. It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

19. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).

20. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

**Committee clerks,
January 2025**

Annexe A – Policy Note

**POLICY NOTE - THE BUILDING (PROCEDURE) (SCOTLAND)
AMENDMENT REGULATIONS 2024 SSI 2024/376**

The above instrument was made in exercise of the powers conferred by sections 24(2) and 33 and schedule 3 of the Building (Scotland) Act 2003. The instrument is subject to negative procedure.

Summary Box

To ensure that information demonstrating how compliance with mandatory standards setting requirements for the energy and environmental performance of building work is provided. To require the issue of such information to the local authority verifier in respect of building design, on submission of an application for building warrant or application for amendment of building warrant and in respect of construction, on submission of a completion certificate.

Policy Objectives

Section 1 of the Building (Scotland) Act 2003 (the Act) allows Ministers to make regulations (building regulations) with respect to the design, construction, demolition and conversion of buildings and the provision of services, fittings and equipment in or in connection with buildings for purposes including securing the health, safety, welfare and convenience of persons in or about buildings, furthering the conservation of fuel and power, and furthering the achievement of sustainable development.

Section 24(2) of the Building (Scotland) Act 2003 (the Act) allows Ministers to make regulations as to the information which shall be contained within building standards registers.

Section 33 of the Building (Scotland) Act 2003 (the Act) allows Ministers to make regulations as to the procedures to be followed in connection with applications required to be made under the Act.

In December 2022 the then Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights confirmed that, in response to Alex Rowley MSP's Proposed Domestic Building Environmental Standards (Scotland) Bill, the Scottish Government would make subordinate legislation by 14 December 2024 to give effect to Mr Rowley's final proposal "to introduce new minimum environmental design standards for all new build housing to meet a Scottish equivalent to the Passivhaus standard, in order to improve energy efficiency and thermal performance".

The purpose of review is to consider changes to the requirements and processes set within The Building (Scotland) Regulations 2004 (as amended) and The Building (Procedure) (Scotland) Regulations 2004. Changes under consideration are to introduce updates within Scottish building regulations and

supporting guidance to define ‘a Scottish equivalent to the Passivhaus standard’. The intent is that these changes will deliver two outcomes:

- Improvements to the setting of energy and environmental (ventilation) performance and standards for new buildings, leading to lower energy demand (and reduced running costs) and a healthy indoor environment; and
- Improvements to the design and construction process to give greater assurance that compliance, and therefore the performance sought, is delivered in practice.

The review is undertaken in two stages. Consultation is concluded on the first stage, which consulted on the principles behind such a change to standards and the regulatory change needed to enable the setting of such standards. A second stage will consult on the nonlegislative changes needed to deliver such a change in practice through the building standards system. This instrument is made in response to the outcome of the first stage of the review. This instrument implements the legislative changes needed to give effect to Mr Rowley’s final proposal. Regulation 2 introduces a requirement for developers to provide an ‘energy and environmental design statement’ with applications for a building warrant or applications to amend a warrant and an ‘energy and environmental construction statement’ with each completion certificate. These statements describe how the design and construction of the building complies with paragraphs 3.13, 3.14, 3.28, 6.1 to 6.7, 6.10, 7.1 and 7.2 of schedule 5 of the Building (Scotland) Regulations 2004, these being the mandatory standards relevant to the delivery of energy and environmental performance. Regulation 2 also requires that this information be recorded on the building standards register.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children’s rights. In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, The Building (Procedure) (Scotland) Amendment Regulations 2024 compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

The subject of this review has relevance to the Scottish Government’s policy to maintain alignment with the EU. Minimum energy standards set through building regulations formed part of the transposition of Directive 2002/91/EC (recast as 2010/31/EU) on the energy performance of buildings. Recent amendment of this Directive as (EU)2024/1275 are now published by the European Commission.

Whilst the regulatory changes made by this instrument do not directly affect previously transposed provisions, the ongoing review, examining non-

legislative changes to performance targets and processes which will implement these changes, will assess the continued opportunities for, and risk to, alignment.

Consultation

Before making or amending building regulations, Scottish Ministers are required, under Section 1(2) of the Building (Scotland) Act 2003, to consult “such persons as appear to them to be representative of the interests concerned”. Prior to public consultation on proposed changes, this duty is discharged through the development of proposals by a Departmental Working Group, comprising of officials and representatives of industry, together with communication with other parts of Government and bodies representing organisations of the construction industry.

The amendments made by this SSI were the subject of a public consultation that ran from 31 July to 23 October 2024. A total of 350 responses to the consultation were received. The consultation, responses and the consultation analysis report is published online at <https://consult.gov.scot/local-government-and-communities/building-regulations-passivhausequivalent/>.

As a result of that consultation, proposals were further reviewed and changes to regulations to enable the outcome sought by the consultation were agreed. These confirmed amendments are made using powers under sections (24(2) and 33 of the Act. No legislative changes using powers under section 1 of the Act were identified. Consultation responses supported the proposal for implementation of changes in 2028, which is reflected in the in-force date. The outcome of the consultation will also inform the development of a consultation on further, non-legislative change also needed to enable the introduction of supporting changes to published guidance and approved calculation methodologies.

Impact Assessments

A Child Rights and Wellbeing Impact Assessment has been completed on the policy and the instrument and is attached. This identified no specific impact. An Equality Impact Assessment has been completed on the policy and the instrument and the results report is attached. This identified no specific impact.

An Island Communities Impact Assessment has been completed on the policy and the instrument and is attached.

Scoping of a Fairer Scotland Duty Assessment and pre-screening for a Strategic

Environmental Assessment were undertaken and it was confirmed that a full assessment is not required in either case.

Financial Effects

A [Business and Regulatory Impact Assessment \(BRIA\)](#) has been completed and is attached. A limited illustration of the overall potential impact of this policy on business is given. However, the impact of the changes to regulations made by this instrument is not itself quantified. Noting that the changes to building standards within which these regulatory changes to process will be applied has yet to be confirmed. It is noted that a full cost benefit analysis will be provided in support of the non-legislative changes needed to deliver the outcome of the review, in the second stage consultation scheduled for summer 2025.

Scottish Government
Housing Directorate
December 2024

ANNEXE B: SUMMARY OF WRITTEN SUBMISSIONS



Key themes raised in responses to the call for views

Introduction

1. On 18 December 2024, the Local Government, Housing and Planning Committee issued a call for views on the Building (Procedure) (Scotland) Amendment Regulations 2024. The closing date for submissions was 14 January 2025.

Background

2. The Building (Procedure) (Scotland) Amendment Regulations 2024 would require a developer to submit an “energy and environmental design statement” alongside an application for a building warrant and an “energy and environmental construction statement” alongside a completion certificate.
3. These statements would show how the building design, and ultimately the completed building, meet building standards requirements relating to heating, ventilation, overheating risk, energy demand, building insulation envelope, heating system, insulation of pipes and ducts, artificial and display lighting, mechanical ventilation and air conditioning, commissioning building services, metering, statement of sustainability, and electric vehicle charging.
4. In the absence of any motion to annul the Regulations, the requirement to submit such statements would apply from 31 March 2028. The technical standards that will apply from that date have yet to be established by the Scottish Government and will be the subject of a separate Government consultation exercise during 2025.

Understanding this Analysis

5. Several issues should be considered when reading this analysis:
 - **Respondents were self-selecting:** Whilst the call for views was sent to a number of specific stakeholders, it was also open more widely to anyone who wished to respond. Generally, however, only people and organisations with an existing interest in the detailed application of Building Standards procedures will have responded to the call for

views. This means that the views expressed may not match those of the population as a whole and should not be read as such.

- **Complexity:** The Regulations propose technical amendments to building standards procedures, adding to an already complex system of legislation, regulations, and technical guidance. This complexity may have acted as a barrier to responses from individuals and civil society groups that do not have access to expertise in this area.
- **Stakeholders:** The building standards system involves a wide range of stakeholders, with often competing priorities and views. Unanimity of views on any issue is unlikely, which will be reflected in the analysis.
- **Timescales:** Due to the limited parliamentary time allocated to considering statutory instruments, the time available for responding to the call for views and for the subsequent analysis was short and included the festive period. This will have limited the scope and detail included in responses and the range of this analysis.

What are “key themes”?

6. This analysis aims to highlight key issues and concerns about the proposals in the Regulations raised by multiple respondents to the call for views. It is not intended to be a comprehensive summary of every issue raised, although it includes a short section outlining some less commonly raised matters that may be of particular interest to the members of the Local Government, Housing and Planning Committee.
7. It is worth noting that Committee members also [have access to every individual response](#), in addition to this summary.

Who responded?

8. Thirty responses to the call for views were received by 1700 on Tuesday 14 January 2024. The responses were received from the following groups:

Category	Number of responses
Local authority	7
House builder	4
Professional bodies	3
Industry representative groups	9
Individuals	6
Construction product manufacturer	1

Key themes arising from the call for views

9. The call for views posed six substantive questions. The key themes emerging from each question are summarised below, with issues not

covered by specific questions from one to five summarised under the catch-all sixth question.

Question 1: What evidence is there that new-build homes do not meet current energy and environmental requirements set out in Building Regulations and associated technical handbooks?

10. While most respondents were satisfied that new-build homes do meet current building standards energy and environmental requirements, several raised concerns about a lack of data on this issue and several argued that research evidence showed that once built, many new homes do not perform at the level required.
11. Developers were broadly content that new-build homes meet current requirements, with Homes for Scotland stating that “We are not aware of any evidence that there is a wide spread issue of non-compliance”, a view shared by Barratt Homes and David Wilson Homes, which argued that “Adherence to the current warrant process ensures compliance with environmental requirements as outlined in the Building Standards Technical Handbooks.” Barratt Redrow argue that “Across industry there is some evidence to suggest that some new build homes may have a performance gap between design vs as built. However, we note that this is often a result from both calculation methodology inaccuracies/assumptions and external factors such as occupant behaviour.”
12. This view of general compliance is largely shared by local authority building standards departments, with Local Authority Building Standards Scotland, Highland, Dumfries and Galloway, and Dundee Councils arguing that the current system effectively prevents non-compliance. Moray Council highlights a situation where defects were detected and rectified while Edinburgh and Perth and Kinross Councils argue that consistent data is not available to enable them to assess whether new builds perform as expected post completion. The view that there is a lack of data is shared by others, such as the Scottish Federation of Housing Associations and Scottish Ecological Design Association.
13. A small number of respondents argue that it is well known that new build homes do not meet current energy requirements. Insulation manufacture Rockwool states that “It is widely known that there is already a significant performance gap between the energy use of buildings expected at the design stage, and the actual energy use of buildings once built. The Carbon Trust has previously found this averages at around a 16% difference, adding over £10/m² in higher energy bills.” The findings of such studies are also highlighted by individual respondent Dr Paul Tuohy, who states “There have been numerous Post Occupancy studies on new build dwellings that have identified problems with energy and environmental performance, including studies commissioned by BSD, and others carried out by Academia etc.”

Question 2: How will the introduction of energy and environmental design and construction statements drive up compliance with such energy and environmental requirements?

14. No respondent categorically stated that the introduction of energy and environmental design and construction statements will drive up compliance with building standards in and of themselves. However, several respondents argued that the process of drafting the statements, and by making information easier to access for everyone involved in the process may focus minds on achieving compliance, e.g. the City of Edinburgh Council argue that “The statements will make it easier to assess if and how developments are complying with building standards requirements by collating information for each development on how the design elements respond to the specific requirements. This would enable anyone reviewing the development to easily access the information needed to assess compliance.” While the Scottish Federation of Housing Associations considers that “...statements may drive up compliance if it results in a more robust approach to ensuring current compliance with existing building regulations.”
15. However, a considerable number of respondents argued that the statements will make little difference and simply present another administrative burden on local authorities and developers. Homes for Scotland state that they “...do not believe the statements will help in any way and is an administrative burden/frustration to all involved”. This view is also shared by Local Authority Building Standards Scotland (LABSS), which argue that “At this stage LABSS are unclear on what benefits these statements will deliver on improving compliance. The applicant must already declare on the building warrant application that the building will meet the building regulations and then, on completion, declare that the building has been constructed in accordance with the building regulations and building warrant.” While Barratt Homes argue this would largely be a paper exercise unlikely to drive up compliance, unless local authorities significantly increase physical inspections of developments.
16. A small group of respondents argued that it is impossible to answer this question without more detail on the content of the statements, including the Chartered Institute of Architectural Technologists, architects DX2 Consultancy, and the Glasgow and West of Scotland Forum of Housing Associations.

Question 3: How much might it cost to produce energy and environmental design and construction statements, and do they have the potential to slow down the construction of new homes?

17. There is general agreement amongst respondents that these new requirements will add cost and time to the building standards process for both developers and local authorities. However, there is no agreement on their possible scale of the impact. The likely scale of costs expressed ranges from that outlined by developers such as Barratt East Scotland of

“Circa £2000 depending on the development for the external report. As noted below, the lack of resource and knowledge within the LA has the potential to delay and lead to differing interpretations between LA’s”, to that of individual respondent Dr Richard Atkins, who considers that “There should be no significant additional resources needed by the applicant at the point of a Building Warrant application, nor by the local authority undertaking the necessary checks of the application. Particularly if this process is mandated as requiring a Certificate of Design.”

18. Again, some respondents, such as the City of Edinburgh Council, argue that costs are unquantifiable at present as details of what the new requirements are not yet available.

Question 4: What benefits do you think the Regulations are likely to bring, for example through potential improvements to the environment or energy savings for residents?

19. A broad range of answers were given to this question, range from David Wilson Homes statement that they “Cannot see how a supporting statement would realise further improvement” to South Lanarkshire Council’s claim that “...the process would bring improvements in energy efficiency, resulting in a higher level of comfort for residents and potentially lower energy costs. A reduction in energy use will also help reduce carbon emissions.”
20. Several respondents raise concerns that a focus on process and technical standards, without commensurate focus on workmanship and robust inspection regimes, will not drive improved compliance, e.g. individual respondent Chris Andrews argues that “Unless the regulations impose 'as-built' thermal and energy efficiency measurements then I feel that more regulation is not what is needed most! People need well built homes. This is reflected in the quality of workmanship - attention to detail - air tightness - thermal continuity. From there you are more likely to achieve what you have actually designed. Absence of focus on these matters, such as to focus on these Regulations, is putting the cart before the horse.”
21. Again, several respondents, such as the Chartered Institute of Architectural Technologists, argue that the question cannot be answered without greater detail about the nature and scope of the energy and environmental design and construction statements.

Question 5: Do local authority building standards departments have the expertise and resources required to analyse such reports and undertake reasonable on-site investigation to check their veracity?

22. There was broad agreement amongst respondents that local authority building standards staff have the skills and expertise required to assess the new reports, possibly subject to specific additional training on the new requirements if required. Dundee City Council highlighted a potential specific training need if the Passivhaus standard is adopted, as this

requires use of a specialist software package which staff (and most UK architects and developers) will not have been trained to use.

23. However, many respondents raised concerns that building standards departments are already under significant pressure and have no, or very limited, scope to take on additional work, e.g. Homes for Scotland argue that “Members cite their concern that Local Authority Building Standards teams currently have the necessary resources to deal with all of the recent changes to regulations whilst managing the throughput of building warrant applications at the pace necessary to ensure there are no delays to the development of new homes. One homebuilder cites that completion checks “very rarely happen in person”, while others anticipate that the requirements of this regulation will likely cause delay and further frustration for home builders and also for building control staff who are already under resourced and required to adapt to changes in technology and building standards” Barratt Homes East Scotland and other developers consider that this lack of resources, and possible need for additional training, could lead building standards departments to outsource the analysis of the new reports to independent consultants.

Question 6: Do you have any other reflections on the Regulations?

24. A broad range of issues and potential improvements to the building standards system were outlined in response to this question, many of which were already aired in response to previous questions or were not directly related to the changes proposed in the Regulations. Significant new comments and suggestions include:
- Ensuring compliance with building standards requirements will depend on a robust and comprehensive scheme of on-site verification by local authority building control staff, rather than tweaks to regulations. Without such inspections verifiers simply must rely on statements about compliance made by developers. This will require more trained staff and additional resources.
 - The speed and scope of ongoing changes to the building standards system is outstripping the ability of local authority staff and developers to effectively comply or understand cost implications. Fewer, more considered, changes would help reduce pressure on everyone working in the industry.
 - Homes for Scotland argue that an alternative to the Passivhaus standard developed by the industry could deliver equal, or greater, reductions in energy usage and emissions at far lower cost.
 - There are concerns that adopting the Passivhaus standard will add significant cost to new-build homes, will not deliver significant energy savings compared to current standards, and that strict air-tightness requirements and the need use of mechanical ventilation may worsen air quality within homes.

LGHP/S6/25/2/5

- Consideration should be given to the impact of the Regulations on non-domestic buildings, in addition to new homes.

Alan Rehfisch

Senior Researcher

SPICe Research

January 2025

ANNEXE C: CORRESPONDENCE FROM MINISTER FOR HOUSING

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 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 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.

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

Yours sincerely,

PAUL MCLENNAN

Annex A

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.