

REPORT TO: CITY DEVELOPMENT COMMITTEE - 27 JUNE 2011

REPORT ON: IMPROVING CHOICE IN VERIFICATION OF BUILDING STANDARDS - CONSULTATION BY SCOTTISH GOVERNMENT

REPORT BY: DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 278-2011

1 PURPOSE OF REPORT

- 1.1 The purpose of this Report is to set out Dundee City Council's response to the Scottish Government Consultation document on 'Improving Choice in Verification of Building Standards'.

2 RECOMMENDATION

- 2.1 The formal period for Consultation on this document ended on 10 June 2011. It is recommended that the Committee notes the response set out at Appendix 1 submitted by the Director of City Development to the Scottish Government on the Consultation paper.

3 FINANCIAL IMPLICATIONS

- 3.1 The revenue generated for the Council by Building Standards Verification was £436,171.11 in the last financial year. The appointment of outside verifiers would substantially reduce this income.

4 BACKGROUND

- 4.1 The Building (Scotland) Act 2003 came into force on 1 May 2005. It set out a framework for the current building standards system in Scotland and all 32 local authorities were appointed as sole verifiers for their respective geographical areas for a 6 year period ending in May 2011. Ministers now wish to consult on introducing choice into the market. Therefore, this consultation aims to seek the views and opinions of key stakeholders and users of the building standards verification system in Scotland in relation to introducing customer choice for the new housing.
- 4.2 The Act gave powers to Scottish Ministers for the first time to choose who should verify building warrant applications and completion certificates. It also set out the roles of approved certifiers, local authorities and verifiers. Approved certifiers are competent people who are recognised as able to certify specific aspects of design or construction work. Local authorities have the enforcement powers including dealing with dangerous and defective buildings.
- 4.3 The verifier role is intended to protect the public interest by providing an independent check of applications from design through to completion. The successful outcome of the verification process should deliver a building that meets all relevant building regulations.
- 4.4 With the introduction of the new system in 2005 Ministers decided that the responsibility for verification of building standards should be placed with local authorities for their geographical areas for an initial 6 year period ending in May 2011. This has now been extended until 30 April 2017. However they also

suggested that alternative forms of verification may need to be considered in the future in the interests of 'improving choice'.

- 4.5 The current Consultation document sets out a possible option for this using the National House-Building Council (NHBC) which is the standard setting body and leading warranty and insurance provider for new and newly converted homes in the UK. It's role is to work with the house-building and wider construction industry to provide risk management services that raise the standards of new homes, and provide consumer protection to new home buyers.
- 4.6 It is brought to the Committee's attention that the introduction of private verifiers in Scotland could lead to a substantial reduction in revenue income for the Local Authorities.

5 POLICY IMPLICATIONS

- 5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

6 CONSULTATIONS

- 6.1 The Chief Executive, Depute Chief Executive (Support Services), Director of Finance and Assistant Chief Executive have been consulted and are in agreement with the contents of this report.

7 BACKGROUND PAPERS

- 7.1 Consultation on Improving Choice in Verification of Building Standards - Scottish Government, March 2011.

Mike Galloway
Director of City Development

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IJ/KF/ES

07 June 2011

Dundee City Council
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Dundee

APPENDIX I**CONSULTATION QUESTIONS**

Question 1 Do you think verification of building standards would be improved by introducing choice on who provides the service? YES

NO

Comments**Do Not Agree**

Scotland has an excellent and unique Building Standards System comprising of an independent plan checking and site inspection framework provided by Local Authorities and envied by the rest of Europe.

Improvement could be achieved within the existing framework using the results of the Optimal report, working with the BSD to implement improvement using the continuous improvement strategy highlighted in the SABSM Case for the Appointment of Local Authority Verifiers Document which was submitted to Scottish Ministers in support of the retention of Local Authority verifiers.

Choice in the way that is proposed would remove the independent plan checking and site inspection systems provided by local authorities. In instances where a private verifier is used.

Question 2 Do you think that NHBC should be appointed as a verifier? YES

NO

Comments**Do Not Agree**

A consistent approach to the Scottish Building Standards system is already being addressed by local authorities throughout Scotland.

Appointing NHBC as a verifier would not necessarily achieve Scottish Ministers desire for more compliant buildings. In fact it would remove the independent plan assessment check by local authorities to ensure that the design of buildings comply with the building regulations. It would also remove independent site inspections by local authorities which would be detrimental to the end user of buildings. Therefore the wider public interest is protected by the verification role being retained exclusively by local authorities.

Question 3 Do you think there would be benefits in introducing NHBC as a verifier? YES

NO

Comments

Do Not Agree

The system as proposed would take resources away from the established approval system provided by local authorities in the public interest while not necessarily benefiting the end user, which in the majority of instances is the general public.

A suggested way forward to best serve the wider public interest would be by the retention of local authorities as the sole verifier working together in partnership with stakeholders and the BSD to a set timescale with agreed outcomes for delivering an improved integrated quality Scottish system which serves the expectations of stakeholders and the Scottish public alike.

Question 4 Do you think that all appointed verifiers whether public or private should operate within the same legislative, fees, performance and scrutiny framework? YES

NO

Comments

Agree

If such a system is introduced it is only right that all verifiers are working to the same framework.

Question 5 If NHBC are appointed as verifiers do you think the scope of work should be limited to newly constructed houses, flats and maisonettes? YES

NO

Comments

As previously commented we do not agree that the appointment of NHBC as a verifier would achieve any improvement to the current system.

However, should the Government decide to appoint the NHBC as a verifier it should be under a framework that would not see local authorities disadvantaged in providing the wider range of building standards services in the public interest.

This comment is also based on the Building Scotland Bill comments that the possibility of private sector verification should only be considered if the issues of impartiality, accountability, and access to enforcement powers can be resolved. We have seen no evidence that this is the case.

Question 6 If NHBC are appointed as verifiers do you think the scope of work should include conversion of existing buildings to form new houses, flats and maisonettes? YES
NO

Comments

As previously commented we do not agree that the appointment of NHBC as a verifier would achieve any improvement to the current system.

However, should the Government decide to appoint the NHBC as a verifier it should be under a framework that would not see local authorities disadvantaged in providing the wider range of building standards services in the public interest.

Question 7 If NHBC are appointed as verifiers do you think they should be allowed, on a mixed use development of mainly housing, to verify the commercial building aspect? YES
NO

Comments

As previously commented we do not agree that the appointment of NHBC as a verifier would achieve any improvement to the current system.

However, should the Government decide to appoint the NHBC as a verifier it should be under a framework that would not see local authorities disadvantaged in providing the wider range of building standards services in the public interest.

Question 8 Do you have any other comments on the proposals? YES
NO

Comments

As previously commented we do not agree that the appointment of NHBC as a verifier would achieve any improvement to the current system.

APPENDIX II

BUILDING STANDARDS VERIFICATION - IMPROVING CHOICE IN VERIFICATION OF BUILDING STANDARDS RESPONDENT INFORMATION FORM



Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

Postcode	Phone	Email

3. Permissions - I am responding as...

Individual <input type="checkbox"/>	/	Group/Organisation <input type="checkbox"/>
<i>Please tick as appropriate</i>		

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

1 PURPOSE

- 1.1 Improving Choice in Verification of Building Standards. A Scottish Government consultation on the introduction of the National House Building Council (NHBC) for the verification of new housing.

CONSULTATION QUESTIONS

2 BACKGROUND

- 2.1 The Building (Scotland) Act 2003 came into force on 1 May 2005. It set out a framework for the current building standards system in Scotland. The previous system was based on protecting the public interest by making building regulations that dealt with mainly health and safety issues. It was later updated to include measures to save fuel. The system successfully operated from the early 1960's and was administered solely by local authorities. It was however considered in need of updating and a modernised system was introduced in May 2005. This built on existing aims by introducing the need to further the achievement of sustainable development.
- 2.2 The Act gave powers to Scottish Ministers for the first time to choose who should verify building warrant applications and completion certificates. It also set out the roles of approved certifiers, local authorities and verifiers. Approved certifiers are competent people who are recognised as able to certify specific aspects of design or construction work. Local authorities have the enforcement powers including dealing with dangerous and defective buildings. The verifier role is intended to protect the public interest by providing an independent check of applications from design through to completion. The successful outcome of the verification process should deliver a building that meets all relevant building regulations. With the introduction of the new system in 2005 Ministers decided that the responsibility for verification of building standards should be placed with local authorities for their geographical areas. However they also recognised that alternative forms of verification may need to be considered in the future.
- 2.3 Nevertheless it was the opinion of Ministers that there should be an ongoing, independent body to enforce building legislation, with local knowledge and resources. The Act therefore provided for enforcement of building standards by local authorities. This would remain the responsibility of the local authority for the area in which the building work has taken place. This enforcement role will continue to be a local authority function no matter who undertakes the verification role in the future.
- 2.4 When making verifier appointments Ministers must take into account a wide range of criteria as set out in the legislation. These include:-
- qualifications;
 - competence;
 - accountability to the public; and
 - impartiality.

- 2.5 Verifiers should be consistent and transparent in their work. They should also be independent of, and separate from, the organisation they are verifying to avoid any conflict of interest.
- 2.6 With the above criteria in mind Ministers appointed each local authority to undertake the verification role for its respective geographical area. The period of appointment was from 1 May 2005 to 30 April 2011. Verifiers were subject to audit within that period to assess their performance and copies of all [audit reports](#) can be accessed on the government website.
- 2.7 As mentioned above it was recognised during the development of the current legislation that Ministers may wish to consider moving away from the local authority only model.

The Building (Scotland) Bill Policy Memorandum of 18 September 2002 stated:-

“However it is not proposed to exclude the possibility of private sector verification at some point in the future if issues of impartiality, accountability and access to enforcement powers can be resolved. The Bill therefore makes provision for Scottish Ministers to appoint other verifiers, to prescribe differences between different verifiers, either on an individual or class basis e.g. limiting a verifier to a particular region or to certain types of building. The developing experience of Approved Inspectors in England and Wales will clearly be very important in future decisions on the appointment of private verifiers.”

- 2.8 This consultation is asking for views on extending the independent checking of building work beyond local authorities.

3 THE CURRENT VERIFICATION SYSTEM

- 3.1 To support Ministers consideration on the future of verification the Scottish Government Building Standards Division undertook a wide ranging engagement programme with key stakeholders of the service. This included all thirty two local authority verifiers, COSLA, NHBC, other Government Departments, private sector interests and relevant professional bodies.
- 3.2 This was supplemented by a research project undertaken by [Optimal Economics](#). They looked at the present system and suggested options for the future. The engagement strategy concluded with the Minister for Transport, Infrastructure & Climate Change meeting key organisations. Not surprisingly the engagement strategy highlighted differing views on the merits of a public or private verification system. Local authorities said they were best placed to protect the public interest. The private sector view was that they could also achieve this with the added advantage of a more consistent and predictable customer experience.
- 3.3 As part of their conclusions Optimal Economics made the following observations on the present system of verification of building standards:

‘The current system of verification as operated by the local authorities in Scotland is acknowledged to achieve fully the objective of serving the public interest and buildings erected in Scotland are generally considered to be safe and comply with building regulations.’

Performance against the customer interest criterion has improved in recent years and is a clear priority for many Building Services teams. However, there is still some concern among customers about unevenness in performance, slowness of response in some cases and the possibility of being delayed indefinitely by a poorly performing authority. Large scale developers, notably in house building believe that there would be advantages in working with specialist verifiers such as the NHBC which plays this role in England.'

- 3.4 A range of policy options were developed for consideration taking into account the outcomes of the engagement strategy and the conclusions drawn from the Optimal Economics report. In January 2011 Scottish Ministers made their decision. It was made up of two strands.
- 3.5 **Firstly** Ministers decided to appoint all 32 local authorities for a further six years (up to May 2017) to undertake the verification function on a reformed basis. This would see local authorities working to improve service delivery within a new performance framework to be introduced in 2012. They would also move forward the compliance with building regulation agenda.
- 3.6 **Secondly** in addition to the reformed local authority model Ministers are **seeking views** on the introduction of limited private verification. This is in line with powers of section 7(1) of the Building (Scotland) Act 2003 and would allow for limited private verification to work alongside local authority verification. This would introduce the [National House-Building Council](#) (NHBC) to the verification process in Scotland. They would however be limited to competing with local authorities as a verifier for new housing only.

Question 1	Do you think verification of building standards would be improved by introducing choice on who provides the service?	YES <input type="checkbox"/> NO <input type="checkbox"/>
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Comments

4 INTRODUCTION OF NHBC AS A VERIFIER

NHBC – The Organisation

- 4.1 The National House-Building Council (NHBC) is the standard setting body and leading warranty and insurance provider for new and newly converted homes in the UK. It's role is to work with the house-building and wider construction industry to provide risk management services that raise the standards of new homes, and provide consumer protection to new home buyers.

- 4.2 NHBC is a unique organisation established 75 years ago, sitting between the public and private sectors with a strong public interest. NHBC is an impartial non-profit distributing company, governed by an independent council of 63 members, representing stakeholders with an interest in raising standards in UK house building. The members of NHBC's Council include nominees from mortgage lenders, professional and trade bodies, consumer organisations and house builders, together with two Buildmark warranty holders.
- 4.3 NHBC's Board is responsible for overseeing NHBC's strategy and financial resources, particularly the business planning and budgeting process. The 14 member Board is accountable to the Council. The NHBC Board is supported by eight committees including the NHBC Scottish Committee which is responsible for overseeing NHBC's activities in Scotland.
- 4.4 NHBC is a non-profit distributing company limited by guarantee, with no shareholders. Any profits generated are re-invested to improve and develop the products and services it provides to industry and to undertake research through the NHBC Foundation. All to further improve house-building standards.
- 4.5 More than 80% of new homes built in the UK each year are registered with NHBC and benefit from its 10-year warranty and insurance policy called 'Buildmark'. Around 1.7 million homeowners are currently covered by Buildmark policies, and over the past 40 years, NHBC has protected more than 30% of existing homes in the UK. It appeals to residential homeowners because it provides them with insurance against major structural problems and damage.
- 4.6 Last year NHBC Building Inspectors carried out nearly 500,000 inspections across the UK to check compliance of construction onsite with NHBC Standards recording breaches of these Standards where they occurred. NHBC Registered builders are obliged to build in accordance with NHBC Standards and rectify all identified defects, formally acknowledging that they have been attended to. NHBC has its own team of directly employed Engineers, and Environmental Scientists who in addition to supporting the work of NHBC Inspectors audit every NHBC registered development assessing its structural, geo technical and environmental design.
- 4.7 NHBC also provide the following services to the house building industry;
- Building Control
 - Training – for example, construction management training
 - Health and Safety – for example, Health and Safety Consultancy service
 - Sustainability – for example, Energy Assessments.

The Building Control Service

- 4.8 4.8. In England and Wales the function of Building Control is to ensure compliance with the Building Regulations in accordance with the Building Act 1984. This regulatory function is carried out by a Building Control Body (BCB). A BCB includes private sector Approved Inspectors (AI). NHBC Building Control Services Ltd (NHBC BCS) is a wholly owned subsidiary of NHBC and was appointed by the UK Government as the first AI in England and Wales in 1985. Since then, NHBC BCS has worked alongside local authority service providers and last year provided Building Control on 48,520 dwelling units.

- 4.9 There are over 450 staff in the NHBC Technical Services Department which is responsible for the operational delivery of the NHBC Building Control service. NHBC Surveyors appraise the Building Control applications and determine an appropriate inspection plan for the project. On low rise residential developments this will be NHBC's standard risk based Key Stage Inspection System (KSIS) with any additional specified elements of inspection by engineers or surveyors as deemed necessary. On more complex developments, a bespoke inspection regime will be determined. Both regimes are supplemented by frequency inspections.
- 4.10 The KSIS process is one of NHBC's strengths as it is undertaken to raise standards and limit defects through inspection at critical stages of construction. Where NHBC is delivering Building Control in England and Wales the KSIS system will target at least 5 inspections at key stages in the construction of the new home. These are carried out by locally based NHBC Building Inspectors to check compliance of the construction with the Building Regulations. As indicated above these inspections are supported by NHBC Surveyors and Engineers where this is necessary.
- 4.11 NHBC offers a single point of contact for both Building Control Surveying and Engineering purposes which is an attractive service for building companies operating nationally. This enables a consistent level of service delivery for customer services generally and for interpretation of the Building Regulations. NHBC offer a Type Approval scheme for repeat design of homes which can accelerate the Building Control approval process for repeat designs.
- 4.12 There are approximately 18,000 house builders and developers on the NHBC register (known as NHBC registered builders or NHBC registered developers) who are governed by NHBC Rules requiring them to build in accordance with NHBC Building Standards when building new homes.
- 4.13 The end users of NHBC Building Control benefit from 'no fault' insurance protection designed to cover non compliance with specific Building Regulations (predominantly those relating to health and safety). Recipients of a Building Control service from NHBC will have a readily available and easily accessible form of redress should non compliance with building regulations become apparent with their home. This insurance protection is in addition to the insurance and warranty protection provided for mortgage purposes.

NHBC in Scotland

- 4.14 In Scotland NHBC employs over 60 staff with NHBC's Director in Scotland, its Engineers, Environmental Scientists, Energy Assessors and Administrative support being based in its Scottish office in Edinburgh. The remaining and majority of NHBC's staff in Scotland, as in the rest of the UK, are home based - an arrangement that is effective, environmentally friendly and seen to serve the communities within which they live and work.
- 4.15 NHBC already employs a number of Scottish Building Standards Surveyors who to date, are undertaking plan appraisals for English Building Control projects and project managing conversion projects for warranty purposes in Scotland. NHBC has two teams of Building Inspectors covering Scotland. Should NHBC be appointed as a verifier it will create new employment opportunities for Building Control Surveyors to ensure it can effectively manage its plan appraisal process in Scotland and for Building Inspectors to ensure it can meet its compliance checking procedures.

- 4.16 Should Scottish Ministers choose to appoint NHBC as a verifier in the future, it is NHBC Building Control Services Ltd that will provide verification alongside the current 32 local authorities. Any reference to NHBC in the questions within this consultation paper refers to NHBC Building Control Services Ltd.

Question 2	Do you think that NHBC should be appointed as a verifier?	YES <input type="checkbox"/>
		NO <input type="checkbox"/>

Comments

Question 3	Do you think there would be benefits in introducing NHBC as a verifier?	YES <input type="checkbox"/>
		NO <input type="checkbox"/>

Comments

- 4.17 NHBC has been delivering a full Building Control service alongside local authorities in England and Wales since 1985. It is the largest single provider of Building Control in the UK. NHBC is granted a license to practise Building Control in England and Wales by the Construction Industry Council (CIC). In addition to auditing and maintaining a scheme of Approved Inspectors CIC has been designated by the UK Government as a body for approving inspectors, individual and corporate, in England and Wales. Approved Inspectors registered with CIC are qualified to undertake Building Control work in accordance with the Building Act 1984 and Approved Inspectors Regulations.
- 4.18 The Scottish building standards system is different from the English model. The appointment of any new verifier is at the discretion of Scottish Ministers as described above. The legislation is such that all verifiers in Scotland will be bound by the same principles. Verifiers will need to operate within one set of rules rather than having a split system for public and private verification. They would also be subject to the same scrutiny and performance arrangement. Secondary legislation will have to be amended to cater for procedural and enforcement matters should private verification be introduced.

- 4.19 The intention is that a verifier must process any application for work falling within the scope of their appointment. This would be in accordance with the same legislative, fees, performance and scrutiny framework as local authority verifiers.

Question 4	Do you think that all appointed verifiers whether public or private should operate within the same legislative, fees, performance and scrutiny framework?	YES <input type="checkbox"/> NO <input type="checkbox"/>
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Comments

5 SCOPE OF VERIFIABLE WORK

- 5.1 The license granted to NHBC in England and Wales is unlimited. There is no restriction on the scale or type of projects that NHBC can assess for compliance with the Building Regulations. Their main market is housing although they have moved into the commercial sector in recent years and delivered Building Control on a number of large scale complex projects.
- 5.2 With urban regeneration and building land becoming increasingly scarce, a growing number of new homes are being created from the conversion and renovation of existing buildings. NHBC are involved in this area of work. They also deal with mixed use developments of mainly housing with a small commercial element.
- 5.3 NHBC has stated that newly constructed or converted homes are their core business. They would not wish to provide verification services for alterations and extensions to domestic properties.
- 5.4 As previously outlined Ministers may appoint individuals or bodies, either public or private, to verify applications for building warrants and completion certificate submissions. At present the only bodies appointed as verifiers are the 32 Scottish local authorities for all work in their own geographical area.
- 5.5 An appointment may be made subject to such limitations as Scottish Ministers may impose. These may be framed by reference to area, description of building, cost of building or building work or any other factor they consider appropriate.
- 5.6 If Ministers choose to appoint NHBC as a verifier they may wish to exercise their appointment powers by limiting the scope of work that NHBC may undertake.

Question 5	If NHBC are appointed as verifiers do you think the scope of work should be limited to newly constructed houses, flats and maisonettes?	YES <input type="checkbox"/> NO <input type="checkbox"/>
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Comments

Question 6	If NHBC are appointed as verifiers do you think the scope of work should include conversion of existing buildings to form new houses, flats and maisonettes?	YES <input type="checkbox"/> NO <input type="checkbox"/>
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Comments

Question 7	If NHBC are appointed as verifiers do you think they should be allowed, on a mixed use development of mainly housing, to verify the commercial building aspect?	YES <input type="checkbox"/> NO <input type="checkbox"/>
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Comments

6 GENERAL

Question 8	Do you have any other comments on the proposals?	YES <input type="checkbox"/> NO <input type="checkbox"/>
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Comments

7 NEXT STEPS

7.1 The results of this consultation will help provide the basis for informed and evidence-based decision making by an incoming government, after the Scottish Parliament election in May 2011.

7.2 The questions posed in this consultation document are repeated below. We invite you to engage in the debate about the future of verification of building standards, and welcome your responses to the following questions:-

Question 1: Do you think verification of building standards would be improved by introducing choice on who provides the service?

Question 2 Do you think that NHBC should be appointed as a verifier?

Question 3: Do you think there would be benefits in introducing NHBC as a verifier?

Question 4: Do you think that all appointed verifiers whether public or private should operate within the same legislative, fees, performance and scrutiny framework?

Question 5: If NHBC are appointed as verifiers do you think the scope of work should be limited to newly constructed houses, flats and maisonettes?

Question 6: If NHBC are appointed as verifiers do you think the scope of work should include conversion of existing buildings to form new houses, flats and maisonettes?

Question 7: If NHBC are appointed as verifiers do you think they should be allowed, on a mixed use development of mainly housing, to verify the commercial building aspect?

Question 8: Do you have any other comments on the proposals?

7.3 More information on the legislative requirements and how the building standards system operates in Scotland can be found in the [Building \(Scotland\) Act 2003](#) and the [Procedural handbook 3rd Edition](#). Both of these documents can be accessed through the Scottish Government website.