

Dundas & Wilson

**Improving Choice in
Verification
of Building Standards**

**Analysis of Consultation
Responses**

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1 EXECUTIVE SUMMARY

Key Findings

- Approximately one-quarter of respondents thought that verification of building standards would be improved by introducing choice on who provides the service.
- 74% of all respondents did not think the National House Building Council (NHBC) should be introduced as a verifier and 72% did not think there would be benefits if NHBC became a verifier. However all the developers and contractors who responded agreed that NHBC should be introduced and that there would be benefits.
- Some polarisation of views was evident in relation to the main questions: all local authorities who responded wanted to retain the status quo whilst all developers and contractors who responded wanted the introduction of private verification.
- The consultation has thrown into focus barriers which ought to be overcome to progress further with private verification, such as protecting impartiality and accountability and checking the likely effect of different scopes of private verification.
- There was widespread agreement that in the event of the introduction of private sector verification there should be a common framework in terms of legislation, performance and scrutiny. However, there was no consensus about how fees should be controlled.
- The majority of respondents supported a role for NHBC extending beyond new-build housing in the event of their being introduced as private verifier, although not all parties considered that this should happen at the outset.
- While the consultation paper made reference to experience in England and Wales, many respondents raised queries about how well the system is operating there.
- Other ideas were suggested for improving building standards services, such as allowing local authority verifiers to operate beyond their own Council boundaries and making the most of the new performance framework.

Context

- 1.1 Scottish Building Regulations are set out in the Building (Scotland) Act 2003 ('the Act') and the Building (Scotland) Regulations 2004 ('the Regulations'). These have established a modernised framework, including roles for approved certifiers and verifiers. The role of the verifier is to carry out independent checks and verify if construction work complies with the Regulations. This consultation sought views on extending the role of verifier beyond local authorities and focused on the introduction of the NHBC as verifiers for design and construction work relating to new housing, because of their experience in this role in England and Wales since 1985.

- 1.2 The consultation paper posed 8 questions and the consultation period ran from March 2011 to 10 June 2011. 188 responses were received and the analysis has been carried out in an independent manner. Responses were grouped together on the basis of roles and potential roles in the building standards verification process, and quantitative and qualitative analysis carried out. Comments have been summarised to provide insight into the reasons underlying a response where these have been given. For some questions comments were brought together to amplify the response from a group, and in others the comments have been used to draw out key themes and concerns overall, as appropriate.

Results of the Consultation

- 1.3 73% of respondents did not think verification of building standards would be improved by introducing choice on who provides the service and the majority wanted to retain the status quo. 24% favoured introducing change. Not all groups responded in the same way – the 30 local authorities who responded did so negatively whereas all 14 developers and prospective private verifiers were in favour of introducing choice. The majority of agents and individuals were not in favour, whereas the majority of professional bodies supported the idea. Some reasons given for supporting this proposal were based on the principle that introducing choice and competition would be a good thing. Other reasons related to increasing speed, consistency and responsiveness and bringing Scottish practice in line with that in England and Wales. Concerns about introducing such a change related to fears about the impact on the building standards service, and a perception by some respondents that there were problems with the system in England and Wales.
- 1.4 On the question of the appointment of NHBC as a verifier, again 24% of respondents favoured this while 74% were against this. The main reasons for support were based on recognition of the skills and experience of NHBC and the role they perform in England and Wales. Those against expressed concerns about NHBC - whether or not they would be able to act impartially and be publicly accountable. The desirability of opening up the verifier role to other parties in order to avoid a monopoly (or duopoly) situation was raised in both 'yes' and 'no' responses.
- 1.5 25% of respondents considered that there would be benefits if NHBC were introduced as a verifier; this fits with the responses to the first two questions. Benefits referred to were greater consistency, easy transition to a new system, better customer service with consumer protection and an improved inspection regime. The majority expressed concerns referring to perceptions about the lack of independence, accountability and public scrutiny of the NHBC, loss of local knowledge and loss of a rigorous approach. Some respondents suggested preconditions such as maintaining certain standards and ensuring proper Scotland-wide coverage.
- 1.6 89% of respondents thought all verifiers should operate within the same framework covering legislation, performance, scrutiny and fees while 7% were either unsure or made no comment, and only 4% disagreed. Fees were an area where mixed views were expressed. On the one hand, developers and

prospective private verifiers thought there should be an opportunity to set competitive fee rates, and on the other hand, local authorities wanted to keep fee levels up to fund the full Building Standards service and expressed concern about private sector verifiers having the potential to apply cross subsidies to keep their fee rates down. Some respondents suggested preconditions, such as learning lessons from England and Wales about the workings of a common framework, and the need to consider possible implications arising from VAT requirements.

- 1.7 Questions 5, 6 and 7 related to the potential scope of private verification work for NHBC if they were to become a verifier. Approximately one-third of respondents thought the scope of work should be limited to new-build housing, while two-thirds agreed that the scope of work for NHBC should be extended to verification of (a) refurbishment of existing buildings and/or (b) commercial buildings within mixed use developments. Agents and professional bodies were out of step with other respondents as the majority within these groups indicated that they would prefer the scope of work to be limited.
- 1.8 The comments given in response to these three questions were varied, especially as some parties did not wish to answer the questions on a hypothetical basis. However, it was clear that most would want a level playing field established. Reasons for wanting a limited scope included adopting an incremental approach to change, restricting private verification work to protect the fee base for local authorities, and avoiding difficulties arising from the introduction of a new verifier into the Scottish system. Reasons given for not limiting the scope included ensuring fair competition for all parties, avoiding 'cherry picking' of the most cost-effective work (suggesting contradictory perceptions about the impact on the present service of opening verification up fully), and opening up commercial work to private verifiers to speed up the process.
- 1.9 Question 8 gave respondents the opportunity to make any other comments. 79% of respondents commented giving alternative suggestions, new ideas, and unexpected implications. Some respondents asked for safeguards, such as establishing clear standards for verifiers and ensuring a continuing commitment to achieving sustainable and low carbon development and improved public access to buildings.

Conclusion

- 1.10 Drawing conclusions from this consultation is not easy as many differing points of principle have been expressed by the groups and also by respondents within the groups. Overall the figures demonstrate that a clear majority are not in favour of introducing a private verifier and it could be concluded that there is no widespread appetite for change.
- 1.11 There appears to be a degree of consensus that unevenness of delivery of the building standards service exists in Scotland. However, there is a polarisation of views about how this should be addressed. All the local authority respondents and the majority of individuals want this unevenness to

be addressed by local authority verifiers, many referring to the performance framework which will be introduced in May 2012. All of the developers and contractors, and the prospective private verifiers would like this to be addressed through opening up to private verification to some degree.

- 1.12 The results point to areas worthy of further consideration if matters are to be taken forward. These include the current role and perception of NHBC, carrying out an independent assessment of how public and private verification operates in England and Wales and checking in greater depth the effect that different scopes for extended private verification might have on local authority verification services. In addition further consideration should be given to safeguarding the independence, qualifications, public accountability and transparency of verifiers as prescribed in the Building (Scotland) Act 2003 and recommended in an earlier research project completed by Optimal Economics. Finally, a number of respondents raised the question of whether or not introducing a single private verifier would create a monopoly/duopoly, and this may be another issue worthy of further consideration.
- 1.13 The next step will be for Scottish Ministers to review the results of this consultation and make a decision on how to proceed.

2 INTRODUCTION

- 2.1 Scottish Building Regulations set standards for the health, safety and welfare of people in and around buildings. They also provide standards which encourage conservation of fuel and power and the achievement of sustainable forms of development. Building standards and regulations apply to new buildings and to the alteration, extension and conversion of existing buildings. These are set out in the Act which came into force in March 2003 and the Regulations in May 2005.
- 2.2 The Act and Regulations set out a modernised framework for the building standards system in Scotland with new roles for approved certifiers, local authorities and verifiers. Certification, an optional procedure, is based on the principle that suitably qualified and experienced building professionals and tradesmen can be responsible for ensuring that specified works comply with the Regulations without the need for detailed scrutiny or inspections by local authorities. Building professionals and tradesmen must first be approved to carry out certification tasks. The role of an Approved Certifier is to certify that specified aspects of a design proposal, or of a completed construction, comply with the Regulations.
- 2.3 The role of a Verifier is to carry out an independent check and verify that work complies with the Regulations, both in terms of design and construction. This 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. The Act gave powers to Scottish Ministers to appoint persons (individuals or bodies) as Verifiers as well as Approved Certifiers of Design, and Approved Certifiers of Construction. This principle of certification and verification is being applied in an increasing number of different regulatory regimes.
- 2.4 Since 2002, private sector verification has been seen as an option if issues of impartiality, accountability and access to enforcement powers could be resolved. A wide ranging engagement programme took place with key stakeholders of the service. This included all 32 local authority verifiers, Convention of Scottish Local Authorities (COSLA), NHBC, other Government Departments, private sector interests and relevant professional bodies.
- 2.5 This was supplemented by a research project undertaken by [Optimal Economics](#)¹ which considered the present system and suggested options for the future. The project came to a conclusion with the then Minister for Transport, Infrastructure & Climate Change and his officials meeting key organisations.

¹ Research Project to Support the Appointment of Verifiers from May 2011: Analysis to Establish a Baseline for the Future Operation of the “Reasonable Inquiry” Functions, completed by Optimal Economics on behalf of the Scottish Government in March 2011.

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.

2.6 In 2004 Scottish Ministers appointed the 32 Scottish local authorities as verifiers. This appointment expired on 30 April 2011. In January 2011, Scottish Ministers appointed all local authorities as verifiers on a reformed basis for a further 6 year period ending in April 2017. In addition to the re-appointment of local authorities Scottish Ministers commissioned a public consultation on the proposal to introduce limited private verification by the NHBC in relation to new housing.

3 THE CONSULTATION PROCESS

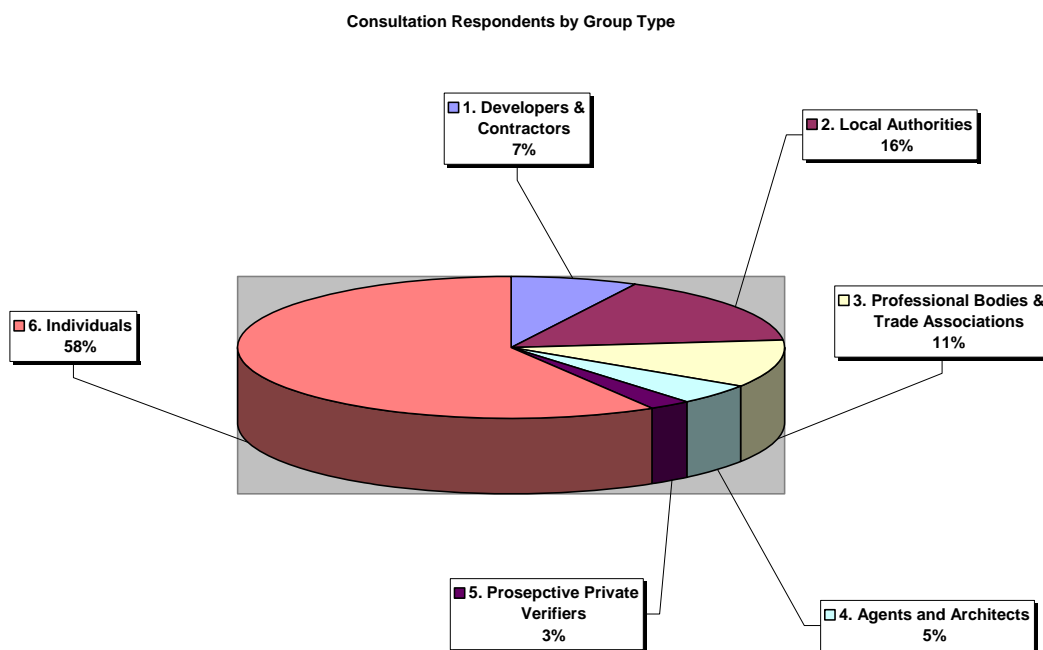
- 3.1 The consultation paper entitled “Improving Choice in Verification of Building Standards” was published in March 2011. This was made widely available to a range of stakeholders including local authorities and members of the public. 552 parties were invited to comment and the paper was published on the Scottish Government website. The aim of the consultation was to obtain for Scottish Ministers a range of views on the proposed introduction of private verification arrangements.
- 3.2 The consultation paper sought views on both the principle of introducing a non-local authority verifier and a possible role for the NHBC in this regard - in other words opening up independent checking to parties other than local authorities. It posed 8 questions, asking specifically about the benefits and drawbacks of introducing a choice of verifier, the pros and cons of the NHBC acting as a verifier, and what sort of regime should be put in place for wider verification arrangements. Questions included the potential for NHBC to handle different scopes of work - ranging from a limited scope of verifying only new houses, to a wider scope to include refurbishment for housing purposes, and/or extending to commercial properties on mixed use development sites. An open question was included at the end of the paper to allow parties to express any other comments on the proposals.
- 3.3 The consultation period closed on 10 June 2011. 188 consultation responses were received. The breakdown of these is shown in Table 1.

Table 1: Consultation Respondents

Group Type	Number	Percentage
1. Developers & Contractors	14	7%
2. Local Authorities	30	16%
3. Professional Bodies & Trade Associations	20	11%
4. Agents and Architects	9	5%
5. Prospective Private Verifiers	5	3%
6. Individuals	110	58%
Total	188	100%

3.4 The largest group² of respondents were individuals, making up more than half of the total number, as demonstrated in Figure 1 (below). The next largest group was local authority respondents who made up 16% or roughly one-sixth of all respondents.

Figure 1: Breakdown of Consultation Respondents



² See paragraph 4.2 for an explanation of the groups.

4 METHODOLOGY

- 4.1 Scottish Government required an independent analysis of the consultation responses and Dundas and Wilson were commissioned to do this work. We were passed full copies of all the responses and have undertaken the analysis work. The main role of the Scottish Government's Building Standards Division (BSD) has been to give feedback on the breakdown of the groups and on factual issues.
- 4.2 The groups were identified in relation to their role, or potential role in the Building Standards verification process. A full list of respondents is provided in Appendix 1. The underlying logic is as follows:
- **Developers and Contractors** – as the 'customer' in terms of the applicant for a building warrant, these parties are representative of the views of the commercial building industry and include housebuilders.
 - **Local Authorities** - represent the regulatory authority and existing verifiers and have been grouped together.
 - **Professional Bodies and Trade Associations** – this group comprises national organisations (some are national to Scotland, others on a UK basis), chartered institutes, lobby groups and charities. This group covers a spectrum of interests and includes Homes for Scotland, the Chartered Institute of Building, the Scottish Association of Building Standards Managers (SABSM) and the Scottish Property Federation.
 - **Agents/Architects/Certification Scheme Providers** - these parties are already involved in Building Standards processes. They may be Approved Certifiers, involved in drawing up plans and submitting applications, or acting as agents in the Building Standards process. They are not verifiers.
 - **Prospective Private Verifiers** – include those who are private verifiers in England and Wales and who may have hopes of becoming a private verifier in Scotland. This group includes the NHBC.
 - **Individuals** - have been grouped together and form the largest group. They include Council employees, local authority building standards surveyors, individuals working in the private sector, and interested members of the public. Twenty five of these indicated on the form that they were attached to a local authority, but the views they provided were on their own behalf and not those of their organisation.
- 4.3 The analysis sets out the number of 'yes' and 'no' responses by each group on a question by question basis. This provides a clear view of the figures overall, and highlights where the response from one of the groups is out of step with the majority view. The comments received have been summarised to provide insight into the reasons underlying a response. We note, however, that the questionnaire asked for 'comments' rather than a reason for the response, and so the value of the comments is variable. Disappointingly,

- 4.4 A number of comments are similar in wording, and we note that there are 6 identical responses from individuals. Many of these appear to be traceable to the response by the Scottish Association of Building Standards Managers (SABSM). However, this should not devalue the comments as it must be assumed that each respondent has made a decision that this particular wording best reflected his or her individual view.
- 4.5 We considered identifying organisations with a particular vested interest and keeping these separate as a further weighting of responses. However, it is clear from a review of responses that very few parties do not have some kind of vested interest: local authority respondents consider that the current service is high quality and they want this retained; some individuals are keen to keep their jobs; and some organisations could benefit if the verification role is opened up to the private sector. On balance, therefore the composition of the groups was carefully considered to bring like parties together on the basis of their role. Responses have been published on the Scottish Government website³. Responses which were marked as confidential have not been published, however they have been reviewed and considered in this analysis.
- 4.6 Overall, the results of the consultation in terms of 'yes' and 'no' responses to each question are as shown in Table 2. Full tables are given for each question in Chapter 5 and in Appendix 2.

Table 2: Summary of Consultation Responses (All Groups)

Question Number	Yes	No	Not Stated	Number of Responses
Question 1	24%	73%	3%	188
Question 2	24%	74%	2%	188
Question 3	25%	72%	3%	188
Question 4	89%	4%	7%	188
Question 5	31%	63%	6%	188
Question 6	65%	29%	6%	188
Question 7	59%	34%	7%	188
Question 8	79%	21%	N/A ⁴	188

³ Responses available on <http://www.scotland.gov.uk/Publications/2011/07/05085838/0>

⁴ This question asked if respondents wanted to make any further comment. In the interests of clarity, those who made further comments have been included within the 'yes' responses, and those who did not within the 'no' responses. Hence the 'not stated' category is not applicable for this question.

5 QUESTIONS AND RESPONSES

- 5.1 This section records the responses received in relation to each question and provides a brief summary of the comments. The analysis seeks to draw out underlying reasons, themes and concerns. As noted in 4.5 above, some of comments made in the responses are remarkably similar in wording and some responses are direct copies of others. We have therefore sought to highlight individual ideas and innovative comments especially where these are based on evidence. The most helpful comments give some insight into the potential implication of change, and quotes have been selected to draw attention to these points. Table 2 in the previous chapter gives the results in summary form, and tables are included in this chapter to present the responses by the groups in relation to each question. Full results are presented in the tables in Appendix 2.
- 5.2 To avoid repetition, comments have been analysed under the most relevant question. For example, some comments made in responses to Question 3 are more relevant to Question 2, and have been analysed accordingly to make it easier to focus on the issues of greatest relevance to each question.

Question 1 - The Principle of Choice

- 5.3 As part of their conclusions Optimal Economics observed '*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.....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.*'
- 5.4 In January 2011 when the Scottish Ministers re-appointed all 32 local authorities as verifiers for a further 6 years, they also started seeking views on the introduction of some limited private verification. In line with the powers of section 7(1) of the Act, there is potential for Scottish Ministers to appoint a private verifier, such as the NHBC, to carry out some aspects of verification, working alongside local authority verifiers.
- 5.5 The context of Question 1 therefore specifically referred to NHBC in this role as private verifier, although the question itself was phrased in terms of the principle of introducing choice. The responses were as shown in Table 3 and comments ranged from those who responded to the principle of NHBC acting in this role and those who considered the question of choice per se.

Table 3: Question 1 - Do you think verification of building standards would be improved by introducing choice on who provides the service?

Groups	Yes	No	Unsure / No Response	Total
1. Developers & Contractors	14	0	0	14
2. Local Authorities	0	30	0	30
3. Professional Bodies & Trade Associations	12	4	4	20
4. Agents and Architects	3	5	1	9
5. Prospective Private Verifiers	5	0	0	5
6. Individuals	12	98	0	110
Overall Total	46	137	5	188
Overall Percentage	24%	73%	3%	100%

5.6 The majority (73%) of respondents favoured the retention of the status quo, but this was not common to all the groups, in particular:

- All developers and prospective private verifiers indicated that they favoured the introduction of new verifiers;
- None of the local authorities favoured the introduction of new verifiers;
- The agents group was fairly evenly split; and
- 89% of individuals considered that there should be no change.

5.7 Although all 14 **developers and contractors** were in favour of introducing choice, only 9 gave reasons for favouring change:

- 2 responses were founded on the principle of choice being a good thing;
- Others referred to the potential to increase speed, consistency and responsiveness in verification; and
- Only 2 referred to actual experience of inconsistency, protracted timescales and variable service levels and an expectation that choice would lead to an improvement. For example, Mactaggart and Mickel Homes Ltd advised *“The current level of service from local authority verifiers varies significantly. An alternate (sic) national verifier would be greatly welcomed for both delivery and consistency.”*

5.8 The main concerns of **local authorities** related to the need to protect the quality and integrity of the Building Standards service. Other comments included:

- No robust case had been made in principle for the need to have a choice of verifiers;
- More than one authority had surveyed their customers and were aware that their service delivers a high level of customer satisfaction; and

- Many authorities referred to recent improvements to the service.

5.9 There were also concerns that choice would not lead to improvements – that private verifiers would turn away from protecting the wider public to meet the demands of applicants. Respondents highlighted the need to satisfy the ultimate customer/consumer rather than the immediate applicant customer and suggested there was a lack of evidence that private verification had delivered improvements to the quality of service in England and Wales. This was noted by the City of Edinburgh Council (CEC).

“As far as CEC is aware...only one study has been done to analyse the performance of building control in England and Wales. This...adopted a self-assessment method of auditing performance. The study was not therefore capable of objectively assessing whether private sector competition had improved the system. Recent reports ...such as the one from Leeds Metropolitan University...gives clear evidence of a compliance gap down south. Since the English and Welsh system is based on site inspections and not on the warrant process which is the current system in Scotland....this research provided clear evidence that the system down south is not working. Adding enforcement of the more onerous Scottish Building Regulations into the equation could lead to an even greater compliance gap if the system down south was replicated to any extent in Scotland.”

5.10 The 12 positive responses from the group of **professional bodies** etc included 2 who made no further substantive comment. Of the others:

- 3 were qualified ‘yes’ responses – on the basis that the inspection regime would need to be strengthened and there should be no impact on impartiality and public confidence (hence there would be a need for scrutiny and some recourse in the event of infringements);
- 4 others were based on the principle of choice being a good thing and/or it would reduce the workload for local authorities and/or give a better service; and
- 3 referred to practice in England.

5.11 Homes for Scotland stated *“... building control resources are currently inadequate in terms of finances, timeliness of decision making, certainty of outcomes, consistent interpretation or physical staff numbers. This has led to delays and a poor quality of service offered to our members”*.

“Local Authorities are under no financial obligation to expand building control resources nor are they under any pressure from Scottish Government or COSLA to fully consider the ring-fencing of building control fees. Further public spending cuts are going to worsen the current situation”.

“Introducing choice would ensure better standards all round - with increased efficiency as a result of competition between services.”

However, the Chartered Institute of Architectural Technologists (CIAT) stated *"it would...enable national companies developing standard products which would not require adaption to suit the differing views of the various verifiers. However, we believe the opening up of the verification system to private companies could reduce the impartiality of the system and have an effect on the confidence of the public; this would need to be addressed. Which could include for example, some form of recourse if it was shown that the service provided was sub-standard."*

- 5.12 Professional bodies that made a 'no' response referred to fears about loss of accountability and independence and suggestions that standards of compliance in England, particularly with regard to energy efficiency, had not improved. Respondents also expressed concerns about private sector verifiers weakening the current system, and removal of the impartial and independent check. The present system is already improving, they said, and opening it up to choice will not necessarily lead to further improvement.
- 5.13 One of the professional bodies, SELECT⁵, gave no clear 'yes' or 'no', stating that opening the system up to private verification was not preferred now that there is to be a new framework in place to improve consistency amongst local authorities. They stated *"The preferred solution would be to have verification undertaken by local authorities in a consistent and transparent way across Scotland. There remains however, despite recent improvements, too much inconsistency and it may be that the introduction of private verification would improve performance and reliability. Equally, the proposed new performance framework for the recently appointed 32 local authorities may achieve the same objective."*
- 5.14 **Agents** were almost evenly balanced in responses. The 3 'yes' responses referred to the introduction of choice allowing local authority resource problems to be addressed and hence speed up/improve performance and allow a more flexible approach to be taken. It would also allow 'troublesome verifiers' to be ironed out or ignored.
- 5.15 The 5 agents who said 'no' included one which made no further comment. Others referred to the following concerns:
- Experience of arrangements in England suggests that standards of assessment and verification have been adversely affected by the need to drive costs down;
 - A larger number of verifiers is likely to increase costs and result in more variation and inconsistency;
 - Local authorities are likely to retain the complex cases; and
 - Private verifiers may not take on board the concerns of Certifiers.

⁵ SELECT are a Certification Scheme Provider

- 5.16 The **prospective private verifiers** all said 'yes' to this question. One was a qualified 'yes' – only if verification is opened up further to avoid a private monopoly and an open, fair and structured approach is developed. The others also asked that verification be opened up further and referred to the potential for improvements to consistency, speed, performance and compliance levels, consumer protection and customer service which could all be delivered through the introduction of private verifiers.
- 5.17 The main comments made by the 12 **individuals** who responded positively related to the principle of competition (in some cases 'limited' competition) being healthy, and choice being a good thing in the interests of fairness. Others referred to the potential to free up the present verifiers to deal with more complex cases and for standards to be raised. Of the 98 individuals who responded negatively, 16 gave no comments, and others expressed concerns about NHBC and/or the impact on the verification service, such as:
- Consistency and keeping standards up would be more rather than less difficult;
 - Potential loss of local authority verification staff;
 - Record keeping would become more difficult;
 - Coverage in remoter regions might become a problem;
 - Risk that if a local authority service could not compete then it might not be able to keep going;
 - Loss of a localised service with local goodwill; and
 - Other concerns similar to those raised by the local authorities as stated in paragraphs 5.8-5.9 above.
- 5.18 Choice was not considered by some individuals to be a big issue for the service, nor would it necessarily deliver a better service, and in any case real choice was not on offer through this proposal. One individual respondent suggested that *“The introduction of choice is not always a good thing, particularly where regulations require to be enforced....the introduction of choice to the verification system would have the opposite effect of that suggested by the question.”*

Question 2 - Should NHBC be a Verifier?

- 5.19 The consultation paper explained that the NHBC already employs Scottish building standards surveyors in Scotland. They undertake plan appraisals for English building control projects, project-manage conversion projects for warranty purposes in Scotland and there are two teams of Building Inspectors covering Scotland. The consultation paper suggested that if NHBC were appointed as a verifier, new jobs would be created in Scotland. The question asked if NHBC should act as a verifier in Scotland and the responses received are summarised in Table 4.

Table 4: Question 2 - Do you think that NHBC should be appointed as a verifier?

Groups	Yes	No	Unsure / No Response	Total
1. Developers & Contractors	14	0	0	14
2. Local Authorities	0	30	0	30
3. Professional Bodies & Trade Associations	10	6	4	20
4. Agents and Architects	4	5	0	9
5. Prospective Private Verifiers	4	1	0	5
6. Individuals	13	97	0	110
Overall Total	45	139	4	188
Overall Percentage	24%	74%	2%	100%

5.20 Overall 24% responded positively while 74% of respondents wanted no change. Several responses were qualified by the comments submitted and in some cases although the responses appear to be different, the stance is the same. The views of each group are summarised below, making reference to such comments.

5.21 All 14 **developers** responded positively and succinctly and the breakdown was as follows:

- 4 made no further comment;
- 4 referred to the enhanced verification service which now operates in England;
- 4 referred to the technical expertise of the NHBC staff or their track record; and
- 2 referred to the desirability of having choice.

5.22 All 30 of the **local authority** respondents expressed a negative view, presenting multiple reasons to explain why they were opposed to NHBC in this role. The main reasons given were as follows:

- 25 references to the improvements being made to the service already and that there is no need for any major change to the current system at present;
- 20 references to the public interest being better served by a partnership approach than by inviting the NHBC in as a verifier; and
- 14 references to the pressure for change coming from only one sector of customers – the major housebuilders - who were seeking speedier response times.

5.23 Several local authorities raised concerns based on their perception that the NHBC may find it difficult to enforce standards strictly as required by a

regulatory body. The Optimal Economics Research had referred to certain matters such as impartiality that needed to be addressed before private verification could be considered, but there was no evidence that this has happened. Five queries were raised about the NHBC acting as a Certifier – in effect querying whether, as a Verifier, they could continue to carry out their Certification/warranty role. Some authorities were concerned about losing a layer of checking as it would lead to a lower standard of building works.

5.24 7 responses from local authorities referred to negative impacts on the Building Standards service, such as loss of revenue, jobs, funding for research and the one-stop-shop. Fears were expressed about general lowering of standards and a possible price war.

5.25 The 16 responses from the **professional bodies** were more finely balanced than indicated by the figures. While 10 said 'yes' and 6 said 'no', 4 of the 'yes' responses were qualified and the comments indicated that these expressed a view which was similar to some of the 'no' responses. The qualified 'yes' responses were on the basis that there must be transparency, the inspection regime must be strengthened, a sustainability audit should be carried out and other bodies must be allowed to compete. In fact, one respondent suggested that EU law ought to be checked in case this would be viewed as a monopoly. The six other 'yes' responses referred to the good track record of the NHBC in England and NHBC's expertise in domestic new-build. The unsure response suggested that as the NHBC appears to be closely associated with the housebuilders, they may not enjoy the confidence of Scotland's construction industry as a whole.

5.26 An example of an organisation in support is Homes for Scotland who stated *"A number of our members are national house builders operating both north and south of the border and as such have experience of working with NHBC as both the verifier and warranty provider. Feedback from those members has been positive, supporting the extension of the co-ordinated service approach to Scotland."*

5.27 The 'no' responses expressed concern about:

- Verifiers remaining sufficiently independent - the consultation paper had given no indication of how this would be addressed;
- The public perception of NHBC acting in this role when they have housebuilders as members;
- The potential adverse impact on local authority functions and worries about falling compliance levels; and
- Lack of transparency.

5.28 For example SABS noted *"The delivery and development of the verifier service by Local Authorities working with Scottish Government and the retention of sole verification within public services for the next 6 years will deliver greater improvements than introducing the NHBC as a private verifier."*

5.29 The **agents** were almost equally balanced between 'yes' and 'no'. However, the 'yes' responses included one qualified in terms that NHBC must work within the existing framework, and another that made no comments on NHBC and wanted the system to be opened up further. The remaining 2 'yes' responses considered that NHBC was sufficiently impartial and well-placed to carry out this role given the similarity to its existing role and their track record in England and Wales.

5.30 The agents who said 'no' included the following:

- One that made no further comment;
- One wanted no change at all; and
- The three others had concerns about NHBC's lack of experience of Scottish Building Standards, loss of fee earning work and revenue from local authorities, and the difficulties for NHBC acting impartially in this role.

5.31 The majority of **prospective private verifiers** responded positively, however only the NHBC itself gave an unconditional 'yes' response on the basis that it believes it has a proven track record. The other four respondents did not want NHBC to be appointed on their own and indicated that many of the benefits of private verification would not be achieved with NHBC acting in isolation.

5.32 The majority of **individuals** were against the idea of NHBC acting as a private verifier. Only 13 individuals favoured this. One of these made no further comments and another qualified the 'yes' by asking that care be taken over the timing of changes to avoid creating financial problems for local authorities. Comments made by the other 'yes' respondents were mainly on the basis that they considered the NHBC to be better placed than any other organisation because of their experience in England and Wales. A few others thought they would give a degree of choice and also be able to avoid duplication of work.

5.33 The 97 'no' responses included 17 that made no further comment. The most popular comment from others, referred to in almost one-third of these responses, was that there is no need to bring in a private verifier because local authority practice has improved and is continuing to get better. Several comments made reference to concerns about the NHBC, and included the following:

- 19 thought that NHBC would not act impartially or independently as they rely on housebuilders for their funding, nor would they be accountable;
- 5 thought that NHBC would not be able to guarantee the quality of inspections/they did not have the necessary staff;
- 3 thought that NHBC are too close to major building firms;

- 3 considered NHBC to be driven by profit rather than achieving building standards;
- One did not consider that NHBC would be able to carry out a dual role of verifying plus inspecting for the Council of Mortgage Lenders; and
- One did not believe NHBC to be an effective organisation (in terms of consistency and dealing with complaints).

5.34 Other matters raised by individuals in 'no' responses were as follows:

- Concerns about 'cherry picking' of more profitable verification work as that would leave local authorities with less cost effective work;
- Some wanted choice opened up more widely – introducing only one private verifier would be too limited;
- Several raised fears about loss of access for members of the public, price war, job losses; and
- A few referred to unfair competition.

5.35 One individual expressed concern about potential loss of control if verification is outsourced and suggested that "building control" could be an umbrella organisation with a centralised database, providing consistency in interpretation of the regulations but still retaining local relationships and methodologies.

5.36 There was also concern about the arrangements required to keep the warranty and insurance role separate from the verifier role, and it was suggested that there should be an objective review of the changes to practice in England and Wales.

Question 3 - Benefits of NHBC as a Verifier in Scotland

5.37 The Consultation Paper stated that if Scottish Ministers should choose to appoint NHBC as a verifier, then verification would be carried out by its wholly owned subsidiary company NHBC Building Control Services Ltd alongside the current 32 local authorities. This question asked respondents about benefits that might flow from this. The results are shown in Table 5.

Table 5: Question 3 - Do you think there would be benefits in introducing NHBC as a verifier?

Groups	Yes	No	Unsure / No Response	Total
1. Developers & Contractors	14	0	0	14
2. Local Authorities	0	30	0	30
3. Professional Bodies & Trade Associations	11	4	5	20
4. Agents and Architects	3	5	1	9
5. Prospective Private Verifiers	4	1	0	5
6. Individuals	14	96	0	110
Overall Total	46	136	6	188
Overall Percentage	25%	72%	3%	100%

5.38 Not all respondents addressed the question directly, and many commented on the benefits and dis-benefits relating to the principle of introducing private verification. As the focus of the question is on benefits, the analysis gathers together the responses across all groups. In this themed approach a clearer picture emerges.

5.39 72% of respondents suggested that there would be no benefits and the pattern of responses was similar to Question 2, as follows:

- There was unanimous agreement from developers that this would deliver benefits;
- Local authorities unanimously disagreed;
- 55% of professional bodies agreed that there would be benefits, and 25% disagreed or were unsure (20% made no response);
- Agents were more negative than positive, with the majority, 56%, disagreeing;
- All except one prospective private verifier agreed; and
- 87% of individuals did not agree that there would be benefits.

5.40 Several of the 46 'yes' responses were qualified with reference to one of the following pre-conditions:

- The number of inspections must be maintained or strengthened;
- A 'Scotland only' section of verifiers must be created within NHBC ensuring coverage over the whole of Scotland;
- Safeguards about priority, quality of service and training of inspectors would have to be established;

- Verifiers would need to be coupled with innovation and a commitment to new low carbon technologies;
- Verification would need to be opened up to other approved inspectors to avoid a monopoly situation developing; and
- NHBC should act positively to promote certification of design.

5.41 The most frequently-mentioned benefits of introducing NHBC as verifier were as follows (some occurred in more than one response):

- 11 respondents suggested that a single private verifier would achieve greater consistency in interpreting the Building Standards;
- 8 respondents referred to NHBC's experience and established systems that will allow easy transition to a new system offering choice;
- 6 respondents suggested there would be an improved inspection regime – e.g. inspecting works as they proceed on site will be better, especially for smaller projects which currently have no supervision; and risk management inspection and audit will bridge the gap between design approval and completion; and
- 5 thought the quality of build would improve.

5.42 Other less popular suggestions were:

- Improved consumer protection would become available through the alliance of verification with no-fault insurance;
- NHBC offer improved customer focus;
- NHBC, because of their expertise, would provide quicker service/more efficient/reduced time for assessment especially if the new system removes a layer of verification/checking;
- It would allow local authorities to save money/ease pressure on their resources;
- NHBC have areas of specialist advice and a good network of manufacturers and professional bodies - this would allow new expertise to be harnessed; and
- Possible cost benefits may allow the fee structure to be amended.

5.43 Many of those who considered that there would not be benefits explained why they thought this. The most common reason was that NHBC were not considered to be an independent organisation; they are profit-driven and accountable to their members, who are the building industry, and not to members of the public. Allied to this was a concern expressed by individuals and local authorities that commercial confidentiality may restrict the extent to

which the working practices of NHBC Building Control Services Ltd can be opened up to public scrutiny (referred to in more than 20 responses). However, Angus Council believed there would be significant disadvantages to appointing NHBC, but also advised *“the current proposal offers only limited improvement. One could argue that consideration be given to opening the market up totally and offer consumers complete choice. There are considerable disadvantages to this and this option should only be explored when it can be demonstrated that verification of building warrants will not be affected across Scotland....the best option for improvement lies with improving local authority verification through the new performance management framework.”*

5.44 Some of the other main reasons given related to a different perception of the NHBC and how things might work as noted in the examples below:

- NHBC expertise – many concerns related to lack of local knowledge, and there was also a perception that the NHBC may have compliance issues because of the number of warranty claims that are made. Local Authorities in particular were worried that the NHBC would not be able to adopt a sufficiently rigorous approach to compliance and enforcement. Respondents considered that there is a need to investigate NHBC practice more thoroughly;
- Scrutiny levels – concerns that this could result in an extra layer of checking; and
- Impact on building standards/quality of buildings – some parties thought there would be no benefit to the standards and/or that the quality of construction would suffer.

5.45 Other issues related to NHBC’s commercial role:

- NHBC would gain an unfair advantage over other insurers offering home warranty products, effectively occupying a monopoly position and so the verifier role should be opened up more widely; and
- Who would check the NHBC work? There would need to be an audit process.

5.46 And finally concerns were expressed in relation to perceived dis-benefits to the building standards system that may result:

- Confusion would be caused – between building regulations and technical standards, and for members of the public generally;
- Information flow between designers and verifiers would be reduced; and
- There would be an adverse impact on local authority service through reduced resources and also loss of the close working relationship with other Council services (e.g. planning, environmental health).

Question 4 - Framework for verifiers

5.47 The consultation paper noted that the NHBC has been delivering a full building control service alongside local authorities in England and Wales since 1985 and they are the largest single provider of Building Control in the UK. In Scotland, verifiers would need to operate within one set of rules and would be subject to the same scrutiny and performance arrangement as local authority verifiers. A verifier would have to process any application falling within the scope of their appointment, in accordance with the same legislative, fees, performance and scrutiny framework as local authority verifiers. The paper stated that secondary legislation would be needed should private verification be introduced. Question 4 sought views on this and the results are shown in Table 6.

Table 6: Question 4 - Do you think that all appointed verifiers whether public or private should operate within the same legislative, fees, performance and scrutiny framework?

Groups	Yes	No	Unsure / No Response	Total
1. Developers & Contractors	9	4	1	14
2. Local Authorities	29	0	1	30
3. Professional Bodies & Trade Associations	13	2	5	20
4. Agents and Architects	7	1	1	9
5. Prospective Private Verifiers	5	0	0	5
6. Individuals	104	1	5	110
Overall Total	167	8	13	188
Overall Percentage	89%	4%	7%	100%

5.48 Most respondents were able to address this question in a hypothetical manner, setting aside any concerns about the principle of appointing a private verifier. Local authorities and prospective private verifiers who responded were unanimous and a majority within all groups agreed;

- Public and private verifiers should operate within the same framework (local authorities were unanimous in this regard); and
- There should be a level playing field in terms of a framework.

5.49 Given the consensus between the groups and the small number of 'no' responses, it is more valuable to examine all the 'yes' and all the 'no' responses together rather than on a group by group basis. A themed evaluation of comments allows the focus to be retained on respondents' detailed ideas about what a framework should address.

5.50 Some parties referred to the need to create a Scottish standard to make a clear differentiation from practice in England and Wales. It was clear from those who made comments to amplify a 'yes' response that they held different views about how a level playing field might operate. East Ayrshire Council

suggested *“A split public/private system would be administratively complex and place an added burden on the Building Standards Division in managing a performance and scrutiny framework which would adequately ensure that the public interest is being maintained given the commercial pressures that any private sector verifier will be subjected to. The Fees attributable to any warrantable work would have to be set at a rate that would be commercially viable to any private sector verifier and this would result in a large increase for work which falls within the lower fee bands which has historically been subsidised via income from larger projects.”* One individual stated *“It is essential that consistency of standards and performance criteria are applied to allow transparent and easily comparable information for the customer. For example, there is no point in NHBC working to their own standards or English building standards which differ from the current Scottish building standards introduced by the Scottish Ministers.”*

5.51 Some of the ‘yes’ respondents drew attention to certain specific pre-conditions they thought would be necessary, for example:

- The inspection process must be strengthened;
- The VAT implications must be addressed. CIAT had concerns about *“the VAT implications of allowing a private company to become a verifier. Would it result in fees increasing by 20%...we believe it is extremely important that verifiers work to a fee structure to create a level platform for competition”*; and
- Experience from England and Wales must be addressed. The Association of Building Engineers noted *“One of the issues with the framework in England and Wales is that there are significant differences between the public and private sectors in relation to enforcement. To provide true choice all providers should operate to the same parameters.”*

5.52 SABSM advised

“Any private sector organisations appointed as verifiers should be independent standalone bodies independently financed and audited and provide details of all backroom costs, verification budgets and related expenditure etc. otherwise it will be impossible to determine a straight comparison and as such limit the empowerment of individuals/businesses to make their informed choice”.

5.53 Many ‘yes’ respondents suggested that local authorities cannot properly compete unless they are allowed to expand into other geographical areas – alternatively geography (e.g. remoteness) may be a reason for adopting a non-standard approach. Other key points were:

- **Legislation** – several parties suggested that the same legislation may not be possible as the NHBC is regulated by the Financial Standards Authority (FSA) whereas local authority performance is scrutinised by the Public Service Ombudsman;

- **Performance** – service levels should be identified and a culture of continuous improvement should be adopted;
- **Scrutiny** – several respondents referred to the need for a single regulator. This role could be undertaken by the BSD of Scottish Government, who could provide overarching quality assurance and a centralised register. Some parties suggested that the regulator should have the power to fine poorly performing authorities; and
- **Fees** – there was no consensus on fee levels and some contradictory perceptions. Some respondents thought fees must be standardised to avoid cost-cutting which would have the effect of reducing resources, others considered differentials necessary for market forces and choice to operate effectively (including one local authority) and to avoid ‘cherry picking’. Others wanted fees to be negotiable but only in relation to large projects. Some comments about fees also referred to subsidies, both in terms of (a) recognition that building warrant fees subsidise other non-fee-earning parts of the Building Standards service such as safety of buildings etc. and (b) the need to check that the private verifier is not providing a cross-subsidy from other work to push down private sector fee levels. Fees are clearly a difficult area to establish a level playing field in.

5.54 With regard to the small number of negative responses, most comments were made in relation to fees. There was almost an equal split between retaining standard fees and allowing fees to vary. One suggestion was for local authorities to be rewarded for the extra work they would have to do (e.g. keeping registers and giving advice to members of the public, dealing with the more difficult or time-consuming cases etc). The legislative difficulty referred to above about how to reconcile two separate regulatory regimes was given as a negative reason. The CEC, for instance stated,

“Current benchmarking with constituent authorities in the UK Core Cities Group revealed that fee competition in England and Wales is now such that to remain competitive local authorities are operating at half the fee level that existed prior to the introduction of Approved Inspectors. Local authorities are being forced to compete for this work by offering a warranty product similar to that provided by NHBC. This...has changed the focus of local authorities from one devoted entirely and impartially to public safety to one rooted in commercial enterprise. This must inevitably drive down the standard of verification and reasonable inquiry.”

5.55 Approximately 25% of those who responded positively asked that all verifiers should accept all warrants, this point is explored further in the following 3 questions.

Question 5 - Scope of Private Verification

5.56 The licence granted to NHBC in England and Wales is unlimited, with no restriction on the scale or type of projects which NHBC can assess for compliance with Building Regulations. While their main market is housing,

they have moved into the commercial sector in recent years and delivered building control services on some large scale complex projects.

5.57 If Ministers choose to appoint NHBC as a verifier they may wish to limit the scope of work for NHBC. Three questions in the consultation paper related to this. The first asked if the scope of work for NHBC as a private verifier should be limited to cover only new-build residential properties. The results are shown in Table 7.

Table 7: 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?

Groups	Yes	No	Unsure / No Response	Total
1. Developers & Contractors	4	9	1	14
2. Local Authorities	3	27	0	30
3. Professional Bodies & Trade Associations	7	8	5	20
4. Agents and Architects	6	2	1	9
5. Prospective Private Verifiers	3	2	0	5
6. Individuals	36	71	3	110
Overall Total	59	119	10	188
Overall Percentage	31%	63%	6%	100%

5.58 The table shows that an overall majority do not favour restricting NHBC's potential scope in this way. In summary:

- Almost all local authority respondents and the majority of developers and individuals think that the scope should not be limited;
- Professional bodies and prospective private verifiers are fairly balanced with no clear preference overall; but
- Agents are out of step with the others – as a group the majority favour restricting the scope; and
- No groups are unanimous in their views.

5.59 Some parties favoured limiting purely on the basis that they did not support the principle of introducing private verification – at least 6 respondents explicitly mentioned this. A further 4 respondents favoured limiting in order to protect the fee base for local authorities hence ensuring sufficient funds remain available to the enforcing authority.

5.60 Only one of the 4 **developers and contractors** who responded positively made a comment, on the basis that this is where NHBC expertise lies. The 9 developers who responded negatively made reference to the following points (some occurred in more than one response):

- 5 made no further comment;

- 2 respondents thought refurbishment projects should be included within the NHBC scope of work on the basis of a “one-stop-shop”;
- One response was qualified on the basis that NHBC should be able to demonstrate competence and hence the scope should be extended;
- One thought that NHBC and local authorities should compete for all work; and
- One response appeared to be contradictory suggesting NHBC and local authorities specialise in different areas.

5.61 Only 3 **local authorities** wanted the NHBC scope of work to be limited and referred to the following reasons:

- To limit the threat to local authority scope of work;
- This is the only type of work of which the NHBC has experience; and
- Because of experience in England and Wales.

5.62 Of the 27 local authorities who responded negatively, two made no further comment, and others commented that in the event of NHBC being appointed to this role, they should have a fuller scope of work and referred to the following points in their additional comments (this includes occurrences in more than one response):

- The main reason given for not seeking any restrictions was that this limited scope of work is easier and cheaper to do – other verification work requires a disproportionate amount of resources – and that unless private verifiers are allowed to offer a comprehensive service in all geographical areas, an unfair burden would fall on local authorities and there could be fragmentation of the service. Twenty local authorities referred to this;
- Another common reason was that unlimited scope is required to ensure a level playing field, allow proper competition, offer customers the full choice and deliver good customer service. Six local authorities referred to this in their comments;
- 2 respondents referred in principle to Regulation 30 of the Procedural Regulations (qualifications, competence, public accountability and impartiality), questioning whether the NHBC meet the tests; and
- Glasgow City Council despite wanting a fuller scope of works, suggested that *“having the NHBC as a countrywide verifier is unrealistic and highlights possible failings behind the private verifier concept in Scotland.”*

5.63 The **professional bodies** that gave a ‘yes’ response referred to the following reasons:

- This is an area of expertise for the NHBC, and there was one suggestion that NHBC may be reluctant to take on more than this; and
- The scope should be limited at least to start with, to allow NHBC to demonstrate capability in their core business area, and reviewed at a future date.

5.64 The professional bodies giving a ‘no’ response and also providing comments referred to the following:

- The wider experience and expertise of the NHBC, for example suggesting that verification and/or certification of refurbishment could be opened up to other bodies, similar to the Competent Persons schemes in England and Wales;
- The principle of opening the full building standards service up to private verification;
- There was some urgency to open up commercial property to private verification in order to speed things up; and
- Public buildings and larger developments should be verified by local authorities.

5.65 The other respondent in this group, SELECT, was unsure and responded in the following terms *“There are pros and cons but on balance we feel that all verifiers should be performing across the same breadth and depth of work and that limiting verification to specific areas raises the possibility of causing confusion and perhaps distorting competition.”*

5.66 The **agents** who gave a ‘yes’ response and also provided comments gave the following reasons:

- The NHBC has limited knowledge of any types of work and new-build housing is their core business and hence this should be the full extent of their scope;
- If it were to be opened up any wider, other private sector organisations should be included;
- The scope should be limited at least to start with, as local authorities are better placed to deal with smaller work; and
- Limiting will protect the fee base for local authorities hence ensuring sufficient funds remain available to the enforcing authority.

- 5.67 Of the 2 agents who said 'no', one did not support the idea at all, and the other simply stated that the scope should cover the full range of construction works.
- 5.68 All the **prospective private verifiers** gave similar reasons for saying 'yes', and 'no', referring to the following:
- One considered limitation at the start would enable local authorities to become familiar with the new arrangements;
 - 3 thought that widening the scope combined with opening up the role to other private verifiers would provide greater benefits; and
 - The NHBC agree with a wider scope on the basis that other types of development are commonly done as part of a new-build project.
- 5.69 The **individuals** who gave a 'yes' response and provided further comments referring to the following:
- The most common suggestion was that NHBC has limited knowledge of any types of work outwith their core business and hence this should restrict the full extent of their scope;
 - Several considered less to be better, scope should be limited as far as possible in order to protect the building standards service;
 - Others wanted the scope to be the same as NHBC work at present, some explicitly on the basis of limiting the threat to local authority work;
 - One thought that as NHBC does not meet the criteria specified in Regulation 30 (qualifications, competence, accountability to the public and impartiality), their scope of work should be limited;
 - One thought that the scope should be limited at least to start with, to allow them to demonstrate capability in their core business area; and
 - One was on the basis of competition, as follows *"As long as NHBC are the only option as a private verifier they should be limited in scope. If they are given the opportunity to establish themselves before any other company or organisation it would be difficult to launch a competing business"*.
- 5.70 Of the 63% of individuals who responded negatively, comments received were as follows:
- The main reason respondents gave for not seeking any restrictions was that this work is easier and cheaper to do – other verification work requires a disproportionate amount of resources – and that unless private verifiers are allowed/required to offer a comprehensive service in all geographical areas, an unfair burden would fall on local authorities and there could be fragmentation of the service. This was referred to in twenty-two responses;

- The point of principle that if private verification was being introduced it should be fully opened up was included in several responses;
- Several either provided no further comments or merely stated that NHBC should not be appointed;
- Others were concerned about impact on the building standards service and potential fragmentation;
- A number believed it was important to deliver a proper choice to customers and maximise competition; and
- One respondent suggested that unlimited scope is required to offer customers the full choice and deliver good customer service, for example *“Limiting a verifier to new build dwellings only does not allow a full working knowledge, appreciation and understanding of the Building Standards. This would affect the quality and the ability of NHBC as a verifier and the service received by the customer/public”.*

Question 6 - Extending the scope of private verification – Residential Conversions

5.71 Question 6 related to the potential to appoint NHBC as verifiers in relation to some refurbishment and conversion work to create new residential accommodation within existing buildings. The results are shown in Table 8.

Table 8: 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?

Groups	Yes	No	Unsure / No Response	Total
1. Developers & Contractors	13	1	0	14
2. Local Authorities	24	5	1	30
3. Professional Bodies & Trade Associations	10	5	5	20
4. Agents and Architects	2	6	1	9
5. Prospective Private Verifiers	5	0	0	5
6. Individuals	69	37	4	110
Overall Total	123	54	11	188
Overall Percentage	65%	29%	6%	100%

5.72 As noted in the Table 8, 65% of respondents overall favoured this (in the event of NHBC being appointed as private verifier) and 29% were not in favour. The results of this question should dovetail with Question 5. However, we noted that although 59 respondents thought the work of the NHBC as private verifiers should be strictly limited, only 54 respondents thought the private verification work should **not** include residential conversions. This seemed inconsistent, but having interrogated the results further, the reason for the difference in the figures appears to lie with those

who did not respond (see table in Appendix 2). Although there is a similar number of 'no' respondents to both questions, these are not the same parties for each question.

5.73 The reasons for supporting the inclusion of residential conversions in the scope of works were similar to the reasons for the previous question. In many cases respondents merely repeated the reason they had given or cross referred to it. Additional reasons given in response to this question were:

- Retrofit and conversion are important areas for reducing carbon emissions and there is a need to improve the current housing stock in this regard;
- NHBC should extend their scope or they will be a barrier to change; and
- NHBC should have a different scope. For instance North Lanarkshire Council suggest that *“there are other forms of warrantable work which pose specific difficulties e.g. non professional design supported by non certified structural design and/or non certified electrical work. Fee income in this area of work does not cover the associated verification work.”*

5.74 Some of the negative responses to this question were based on the principle of limiting private verification as much as possible – particularly, in some cases, if NHBC would be the only private verifier. Others believed NHBC to have limited knowledge of this type of work – some parties referred to experience in England – whereas local authorities have developed good expertise in this area. One of the agents, WMA Ltd stated *“This can sometimes include significant amount of structural alterations to the existing properties including an assessment of how traditional forms of construction perform....Under the current certification scheme the verifier is not entitled to query the structural engineering.”*

5.75 Several parties were concerned that opening up this type of work to private verifiers would fragment the holistic and localised services given by some Councils in relation to advice/consents for planning, listed buildings, environmental health and housing. Because of the complexity, they reasoned, there is a greater potential for inconsistency. Underlying these comments is a concern to avoid damage to the Building Standards service. One individual drew attention to local authority records *“which in most cases will date back to the original buildings...By having these records at hand and the local knowledge, it speeds up the process, thus providing a better service.”* And the Association for the Conservation of Energy stated *“Research has made it clear that the worst area for non-compliance is conversions and extensions. We therefore oppose the use of private verifiers in these property types...”*.

Question 7 - Extending the scope of private verification – Commercial

5.76 Question 7 related to the potential to appoint NHBC as verifiers in relation to some commercial building work. The results are shown in Table 9.

Table 9: 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?

Groups	Yes	No	Unsure / No Response	Total
1. Developers & Contractors	11	3	0	14
2. Local Authorities	24	5	1	30
3. Professional Bodies & Trade Associations	7	6	7	20
4. Agents and Architects	1	6	2	9
5. Prospective Private Verifiers	3	2	0	5
6. Individuals	65	41	4	110
Overall Total	111	63	14	188
Overall Percentage	59%	34%	7%	100%

- 5.77 In percentage terms, 59% agreed and 34% disagreed. The results of this question should dovetail with the results in Questions 5 and 6, and we note that the pattern of responses from developers, contractors and local authorities is similar to the previous two questions. As a group the agents are out of step with the others, as it is the only group with more ‘no’ than ‘yes’ responses, and this is in line with their responses to Question 5.
- 5.78 **Developers and contractors** were the most positive group with only 3 negative answers and one qualified 'yes' asking that NHBC be required to demonstrate their competence first. Comments were received from 5 other developers and these referred to larger projects, for example BDW East Scotland Ltd noted *“As more and more residential schemes have commercial properties integrated within them i.e. shop/office with a flat above...preference that NHBC be allowed to verify commercial properties.”*
- 5.79 Local authority support was mostly on a point of principle. Only 5 local authorities wanted this excluded from the scope. Falkirk Council for example referred to *“concerns raised in terms of due diligence, public safety, accountability”* and others who made comments referred to the same points of principle as in their responses to Question 6 – limiting damage to Council services.
- 5.80 The views of professional bodies are somewhat inconclusive. Some of the 7 ‘yes’ responses referred to NHBC expertise in this area, some recognised there would be a need to address a skills gap, and others based their response on a point of principle. Those who were negative or unsure suggested that a new system with clear guidelines would be needed, or that this area was clearly outwith NHBC expertise. However, verification of commercial buildings was referred to by the Scottish Property Federation as a key area to be addressed, and Homes for Scotland stated *“We would support the inclusion of mixed use development within the scope of NHBC as verifiers. If this is not the case and the developer on a mixed use site is forced to work with a number of verifiers, we foresee difficulties and delays. We.....appreciate that there is likely to be a skills gap that will need to be*

filled. If it is felt that private sector involvement in verification should be phased, with non-domestic on mixed use sites coming later, then we would accept that.”

5.81 Only one **agent** responded positively on the basis of the principle of opening verification up. The reasons the majority of agents gave for not agreeing were similar to Question 6, revealing a commonly held view that the NHBC lack the necessary knowledge or experience of the Scottish building standards system. There were also 2 ‘no comments’. A further concern was raised by Michael Laird Architects *“This consultation is headed “for the verification of new housing”. If this is to be extended to non-domestic work then the consultation has to be opened up to include other potential private sector verifiers.”*

5.82 **Prospective private verifiers** were almost equally balanced between ‘yes’ and ‘no’, (NHBC were in support), again the same as responses to Question 6. Both types of response referred to avoiding confusion, maximising choice for applicants and opening up the verification process as wide as possible. Butler and Young Group Ltd noted *“For the full benefits of introducing the private sector to be achieved...providers with wider capability must be introduced and the scope widened to include commercial development.”*

5.83 **Individuals** were clearly more in favour of such a change in principle. 59% of individuals gave a ‘yes’ response and almost half of these refer to a point of principle, similar to the reasons given to questions 5 and 6. New reasons refer to:

- NHBC experience in England and Wales;
- All verifiers will be trained and able to deal with all building types;
- Benefits to project delivery – the project as a whole should be addressed through verification otherwise fragmentation problems arise;
- This type of work is the most labour intensive and therefore excluding private verifiers would be particularly disadvantageous; and
- One suggested setting limits on the extent of commercial building which may be verified within a single project.

5.84 The 37% of individuals who gave a ‘no’ response included 12 ‘no comments’ and 3 in favour of a limited role in principle. The other responses suggested that NHBC may not have sufficient experience in this complex area of verification (with a particular concern about fire regulations, suggesting that this local authorities have particular expertise in this area); instead of taking on responsibility for this, they should be encouraged to work alongside other verifiers who do have the specialist knowledge, especially as this is an area where there is significantly greater commercial pressure to deliver results. One respondent suggested extending the scope to all commercial buildings generally.

Question 8 - Other Comments

5.85 The final question was an open question to give respondents an opportunity to raise any further matters. The number of respondents who took this opportunity to make further comments is as shown in Table 10. The 'yes' figure includes those who gave a 'no' response to the question but also gave comments.

Table 10: Question 8 - Do you have any other comments on the proposals?

Groups	Yes	No	Total
1. Developers & Contractors	9	5	14
2. Local Authorities	29	1	30
3. Professional Bodies & Trade Associations	17	3	20
4. Agents and Architects	7	2	9
5. Prospective Private Verifiers	5	0	5
6. Individuals	82	28	110
Overall Total	149	39	188
Overall Percentage	79%	21%	100%

5.86 Some parties used this question to suggest that the questionnaire was biased as it was founded on a pre-supposition of the NHBC acting in the role as a private verifier. In fact, this was the main point of the consultation – to seek views from all parties on the pros and cons of NHBC being introduced as a private verifier. This consultation is the latest within a series of consultations on related matters, and some respondents drew attention to the comments they had made in earlier consultations.

5.87 Many parties used the last question as an opportunity to reiterate their overall support for/concern about the proposals, repeating comments made under earlier questions. For example:

- At least 25 Individuals suggested that there was no strong justification for changing the present system;
- A substantial number of individuals and local authorities asked that local authorities be retained as sole verifiers until at least May 2017 to allow the programme of improvements to be rolled out and developed. The response from SABSM provided a detailed paper which itemised various initiatives which are currently ongoing such as the Benchmarking Group, Consortia Working Groups and peer group review processes and these were also referred to in various responses by local authorities to many of the questions;
- Several respondents asked for an independent review or regulatory review before any change is made;

- A number of respondents from different groups suggested expanding the scope of local authority verifiers to allow them into other geographical areas; and
- Several professional bodies and all of the prospective private verifiers (except NHBC) wanted private verification opened up to other parties on an equal basis, for example, Homes for Scotland advised *“We would however also like to remind the Scottish Government that there is more than one warranty provider operating in Scotland. We would like to see the opportunity widened in the future to allow any warranty body that can demonstrate an adequate level of experience, ability and resource, the opportunity to participate in the verification system.”*

5.88 Other respondents sought to raise wider questions and suggest new ideas. For instance, one respondent posed the question *“what do the NHBC propose to improve the current system?”* Other questions were:

- WMA Ltd asked *“Will applicants be required to conform with the NHBC standards? If so, how will applicants be made aware of the more onerous conditions? Will a SER certificate be deemed to satisfy these additional criteria?”*
- Miller Homes asked *“Are there to be any changes to the NHBC Standards to co-ordinate with the current Technical Standards for a more holistic approach to Regulation as at the moment the two documents can tend to conflict in certain areas/sections? Will the NHBC technical helpline which we find extremely useful be increased in size to accommodate the increased service provision?”*
- One individual respondent suggested *“The Scottish Government should develop an E-Building warrant portal similar to the planning portal. Greater use of type approvals by large scale developers would also help improve LA service. Greater control over fees and how they are used within Councils with 100% being directed back to [building standards services] to drive training forward and allow LABSS to grow to meet current aspirations and market demands.”*
- Dundee City Council in response to an earlier question commented *“A suggested way forward...would be by the retention of local authorities as the sole verifier working 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.”*

5.89 Some respondents made reference to unexpected implications which may arise if a private verifier is introduced. Some of these points had been raised earlier:

- Concern that there will be a net loss of jobs;

- Disputes or differences of opinion may arise between private verifiers involved in inspections during construction works and local authority verifiers inspecting properties at the end of construction for issuing completion certificates. There should be an appropriate system for resolving these, should they arise;
- Some local authority verifiers may wish to withdraw from the role of verifier because of loss of income and a fall in workload;
- Can private verification be introduced without creating a 2 tier service?; and
- The current service maximises the synergy between the local authority verifier system and other Council services (e.g. planning and other regulatory services) - what will happen to this?

5.90 A number of other points suggested that certain safeguards should be considered in the event that private verification is introduced. Some parties expressed these as preconditions, some as queries:

- There is a need for clear service standards for verifiers, including a minimum number of inspectors, and training and qualifications for verifiers and inspectors (specific issues raised in this regard were access and equality issues, and solar energy/Green Deal issues);
- NHBC must comply with Scottish Building Standards not their own NHBC standards, and not the approach which operates in England and Wales;
- There must be a commitment to sustainable development/low carbon development;
- Will private verifiers need to provide a public service? This includes advice and assistance to applicants, and ensuring freedom of information requests can be dealt with; and
- Introducing a comparative private service will help the system – current pressures on funding and staff are causing problems for the service; the introduction of private verifiers will help to ensure customer satisfaction is maintained.

5.91 Finally, some comments relate to the process of considering changes to the verification role, as follows:

- A Business and Regulatory Impact Assessment should be carried out;
- Views should be sought from applicants (even although, arguably, this has been done through this consultation);
- Views should be sought from those who use/occupy buildings (again, arguably, this has been done through this consultation); and

- A suggestion that the scope of work for the NHBC should simply be agreed with NHBC.

6 CONCLUSION AND NEXT STEPS

- 6.1 It is difficult to draw firm conclusions given the number of responses and the range of views expressed. Overall the figures demonstrate that a clear majority are not in favour of introducing a private verifier and it could be concluded that there is no widespread appetite for change.
- 6.2 There appears to be a degree of consensus that unevenness of delivery of the building standards service exists in Scotland. However, there is a polarisation of views about how this should be addressed. Setting aside extreme views that have been expressed, the group responses provide a helpful picture. All the local authority respondents and the majority of individuals want this unevenness to be addressed by local authority verifiers, many referring to the performance framework which will be introduced from May 2012. All of the developers and contractors, and the prospective private verifiers would like this to be addressed through opening up to private verification to some degree. The group of professional bodies (which include lobby groups and charities) are 60% in favour of change, but only one half of this group favour the NHBC being introduced as sole private verifier in Scotland. The majority of architects and agents are against change and against NHBC in this role, but also more finely balanced.
- 6.3 A key concern raised relates to the need for impartiality and accountability on the part of private verifiers. This is expressed keenly by local authorities and local authority employees and SABS, but not only by these parties – agents and professional bodies and other individuals express concern in relation to this. Many respondents cross refer to the Optimal Economics Research and the preconditions which the study advised would need to be put in place before introducing private verifiers. This is therefore highlighted as an unresolved point and a barrier to future change.
- 6.4 Developers and contractors while displaying unanimity in their desire to see change, backed up their views with only limited comments which provide little insight into their underlying thoughts about the introduction of this change. The majority of comments appear to be based on the point of principle that choice will be a good thing. It is disappointing that some greater insight into the impact of changes on the commercial side of the development industry has not been obtained.
- 6.5 On the other hand, those respondents falling within the agents group appear to have given thought to the pros and cons and implications which may explain why, overall, this group expresses a balanced view and are only unanimous about the need for a common framework for all verifiers.
- 6.6 It is clear, therefore that consultation responses are influenced by the different perception of potential ‘winners and losers’, and may also be influenced by geography. It has been suggested that in rural and remote areas the building standards service is good, and there are fears about possible reduction in service, the inability of private verifiers to operate in these areas, and a reluctance to risk change. In busy urban areas, where local authority staff

resources may be less than adequate, change is a more welcome prospect. In addition, large organisations such as the volume housebuilders view the introduction of NHBC as a Verifier as a positive step which could improve quality of construction works, whereas smaller builders have concerns, especially if construction is not being carried out under the NHBC warranty scheme. In other words, there is a genuine concern that introducing the NHBC to create competition in all areas may adversely affect the local authorities' Building Standards services in areas where the current system is operating well.

- 6.7 It has been suggested by various parties in their responses to different questions that very little investigation has been carried out into the business and financial impact of these changes. Several respondents have asked for a Business and Regulatory Impact Assessment to be carried out before any decision is made on changes and this is supported by the confusion of responses on whether or not to limit the scope of NHBC. It is clear from the comments that parties sharing the same objective of protecting a local authority verification service have responded differently. It was useful that the consultation paper included separate questions about opening up the scope, and the options would form a good basis for any future impact assessment.
- 6.8 We have noted that contradictory views have also been expressed about the NHBC. These views stem from different perceptions about their expertise, their effectiveness in England and Wales and their ability to act impartially.
- 6.9 With regard to the question of how representative this consultation is of wider views, it is noted that the BSD sought to maximise publicity and invite comments, and responses have been received from a cross section of parties. Inevitably, those who have responded have done so because they hold particular views or are representative of a particular group, and it is noteworthy that there is a particularly large number of individual responses. In the interests of transparency, this analysis has grouped the responses to allow the spectrum of views to emerge clearly in relation to each group.
- 6.10 The result of this consultation will now be reported to Scottish Ministers who will then consider how to take matters forward.

APPENDIX 1 – CONSULTATION RESPONDENTS

The following organisations and individuals responded to the consultation and were willing for their responses to be made public.

Developers & Contractors

A & J Stephen Builders Ltd
BDW East Scotland Ltd
Bellway Homes Scotland Ltd
CCG (Scotland) Ltd
Dawn Homes Ltd
Gladedale Group
G S Brown Construction Ltd
Mactaggart and Mickel Homes Ltd
Miller Homes
Persimmon Homes East Scotland
Persimmon Homes West Scotland
Taylor Wimpey
Upton McGougan Ltd
1 anonymous response

Local Authorities

Aberdeen City Council
Aberdeenshire Council
Angus Council
Argyll & Bute Council
Comhairle Nan Eilean Siar
Dumfries & Galloway Council
Dundee City Council
East Ayrshire Council
East Lothian Council
East Renfrewshire Council
Falkirk Council
Fife Council
Glasgow City Council
Inverclyde Council
Midlothian Council
North Ayrshire Council
North Lanarkshire Council
Orkney Islands Council
Perth & Kinross Council
Renfrewshire Council
Scottish Borders Council
Shetland Islands Council
South Ayrshire Council
South Lanarkshire Council
Stirling Council
The City of Edinburgh Council

The Highland Council
The Moray Council
West Lothian Council
West Dunbartonshire Council

Professional Bodies & Trade Associations

Association for the Conservation of Energy
Association of Building Engineers
BRE
Capability Scotland
CBI Scotland
Chartered Institute of Architectural Technologists
Chartered Institute of Building
COSLA
Council of Mortgage Lenders
Glass and Glazing Federation
Homes for Scotland
National Federation of Roofing Contractors Ltd
Royal Incorporation of Architects in Scotland (RIAS)
Scottish Building Federation
Scottish Council on Deafness
Scottish Disability Equality Forum (SDEF)
Scottish Property Federation
SELECT
The Coal Authority
The Scottish Association of Building Standards Managers (SABSM)

Agents & Architects

Gary Sinclair Architecture
Harley Haddow LLP
James Denholm Partnership
John Lee - Architectural Technologist
Kraft Architecture Ltd
Michael Laird Architects
Scott and White Building Design Limited
WMA Ltd
1 anonymous response

Prospective Private Verifiers

Association of Consultant Approved Inspectors (ACAI)
Butler & Young Group Ltd
Checkmate
NHBC
PG Surveyors

Individuals

There were also responses from 110 individuals.

APPENDIX 2 – SUMMARY OF RESPONSES BY QUESTION

Table 11 – Summary of Responses by Question

N.B. Percentages have been rounded to the nearest whole number

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

Groups	Yes		No		Unsure		No Response		Total	Number of Comments
	Num	%	Num	%	Num	%	Num	%		
1. Developers & Contractors	14	100%	0	0%	0	0%	0	0%	14	9
2. Local Authorities	0	0%	30	100%	0	0%	0	0%	30	30
3. Professional Bodies & Trade Associations	12	60%	4	20%	1	5%	3	15%	20	16
4. Agents and Architects	3	33%	5	56%	0	0%	1	11%	9	7
5. Prospective Private Verifiers	5	100%	0	0%	0	0%	0	0%	5	5
6. Individuals	12	11%	98	89%	0	0%	0	0%	110	92
Overall Total	46		137		1		4		188	159

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

Groups	Yes		No		Unsure		No Response		Total	Number of Comments
	Num	%	Num	%	Num	%	Num	%		
1. Developers & Contractors	14	100%	0	0%	0	0%	0	0%	14	10
2. Local Authorities	0	0%	30	100%	0	0%	0	0%	30	30
3. Professional Bodies & Trade Associations	10	50%	6	30%	1	5%	3	15%	20	17
4. Agents and Architects	4	44%	5	56%	0	0%	0	0%	9	8
5. Prospective Private Verifiers	4	80%	1	20%	0	0%	0	0%	5	5
6. Individuals	13	12%	97	88%	0	0%	0	0%	110	90
Overall Total	45		139		1		3		188	160

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

Groups	Yes		No		Unsure		No Response		Total	Number of Comments
	Num	%	Num	%	Num	%	Num	%		
1. Developers & Contractors	14	100%	0	0%	0	0%	0	0%	14	11
2. Local Authorities	0	0%	30	100%	0	0%	0	0%	30	30
3. Professional Bodies & Trade Associations	11	55%	4	20%	1	5%	4	20%	20	14
4. Agents and Architects	3	33%	5	56%	0	0%	1	11%	9	6
5. Prospective Private Verifiers	4	80%	1	20%	0	0%	0	0%	5	5
6. Individuals	14	13%	96	87%	0	0%	0	0%	110	87
Overall Total	46		136		1		5		188	153

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

Groups	Yes		No		Unsure		No Response		Total	Number of Comments
	Num	%	Num	%	Num	%	Num	%		
1. Developers & Contractors	9	64%	4	29%	1	7%	0	0%	14	9
2. Local Authorities	29	97%	0	0%	1	3%	0	0%	30	30
3. Professional Bodies & Trade Associations	13	65%	2	10%	1	5%	4	20%	20	16
4. Agents and Architects	7	78%	1	11%	0	0%	1	11%	9	7
5. Prospective Private Verifiers	5	100%	0	0%	0	0%	0	0%	5	5
6. Individuals	104	94%	1	1%	4	4%	1	1%	110	78
Overall Total	167		8		7		6		188	145

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?

Groups	Yes		No		Unsure		No Response		Total	Number of Comments
	Num	%	Num	%	Num	%	Num	%		
1. Developers & Contractors	4	29%	9	64%	0	0%	1	7%	14	6
2. Local Authorities	3	10%	27	90%	0	0%	0	0%	30	28
3. Professional Bodies & Trade Associations	7	35%	8	40%	1	5%	4	20%	20	15
4. Agents and Architects	6	67%	2	22%	0	0%	1	11%	9	7
5. Prospective Private Verifiers	3	60%	2	40%	0	0%	0	0%	5	5
6. Individuals	36	33%	71	64%	1	1%	2	2%	110	79
Overall Total	59		119		2		8		188	140

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?

Groups	Yes		No		Unsure		No Response		Total	Number of Comments
	Num	%	Num	%	Num	%	Num	%		
1. Developers & Contractors	13	93%	1	7%	0	0%	0	0%	14	6
2. Local Authorities	24	80%	5	17%	1	3%	0	0%	30	28
3. Professional Bodies & Trade Associations	10	50%	5	25%	1	5%	4	20%	20	14
4. Agents and Architects	2	22%	6	67%	0	0%	1	11%	9	6
5. Prospective Private Verifiers	5	100%	0	0%	0	0%	0	0%	5	5
6. Individuals	69	63%	37	33%	1	1%	3	3%	110	72
Overall Total	123		54		3		8		188	131

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?

Groups	Yes		No		Unsure		No Response		Total	Number of Comments
	Num	%	Num	%	Num	%	Num	%		
1. Developers & Contractors	11	79%	3	21%	0	0%	0	0%	14	6
2. Local Authorities	24	80%	5	17%	1	3%	0	0%	30	28
3. Professional Bodies & Trade Associations	7	35%	6	30%	3	15%	4	20%	20	14
4. Agents and Architects	1	11%	6	67%	0	0%	2	22%	9	5
5. Prospective Private Verifiers	3	60%	2	40%	0	0%	0	0%	5	5
6. Individuals	65	59%	41	37%	1	1%	3	3%	110	72
Overall Total	111		63		5		9		188	130

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

Groups	Yes		No		Total
	Num	%	Num	%	
1. Developers & Contractors	9	64%	5	36%	14
2. Local Authorities	29	97%	1	3%	30
3. Professional Bodies & Trade Associations	17	85%	3	15%	20
4. Agents and Architects	7	78%	2	22%	9
5. Prospective Private Verifiers	5	100%	0	0%	5
6. Individuals	82	75%	28	25%	110
Overall Total	149		39		188