TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA

29th Meeting, 2002 (Session 1)

Wednesday 30 October 2002

The Committee will meet at 9.45 am in the Hub, Castlehill, Edinburgh to consider the following agenda items:

1. **Building (Scotland) Bill (in private):** The Committee will consider possible lines of questioning for witnesses.

2. **Building (Scotland) Bill:** The Committee will take evidence at Stage 1 on the general principles of the Building (Scotland) Bill from—

   - Douglas Walker, Building Control Consultant, Institution of Civil Engineers
   - Sebastian Tombs, Secretary and Treasurer, Royal Incorporation of Architects in Scotland (RIAS)
   - Richard Gibb, Chairman, RICS Building Control Forum, Royal Institution of Chartered Surveyors (RICS)
   - Chartered Institute of Building in Scotland
   - Malcolm MacLeod, Scottish Regional Director, National House Building Council (NHBC)
   - Neil Cooper, Building Control Manager, National House Building Council (NHBC)
   - Sidney Patten, Chief Executive, Scottish Building
The following papers are attached for this meeting:

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<th>Note from SPICe (private paper)</th>
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<th>Submission from the Institution of Civil Engineers</th>
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<th>Submission from the Royal Incorporation of Architects in Scotland</th>
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<td><em>(Agenda item 2)</em></td>
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<th>National House Building Council (NHBC)</th>
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Papers not circulated:

**Agenda item 2**

Members are reminded to bring the SPICe briefing note on the Building (Scotland) Bill which was issued with the meeting papers for Meeting 28 *(plus the Bill; Policy Memorandum and Explanatory Notes which were circulated as part of the papers for Meeting 26)*.
BUILDING (SCOTLAND) BILL

RESPONSE BY THE INSTITUTION OF CIVIL ENGINEERS IN SCOTLAND

The following comments have been offered on the above Bill to allow consideration of amendments which that be placed before the appropriate committees. The comments deal with the specific issues surrounding verifiers and certifiers and are in addition to our more general submission on the Bill which has been separately submitted.

In a major departure from the existing arrangements the Bill provides the opportunity for Scottish Ministers to appoint verifiers from the private sector in addition to the local authorities and to extend the existing arrangements for self-certification of structural design into other disciplines by the appointment of Approved Certifiers. Significantly Scottish Ministers have chosen not to harmonise with arrangements in place elsewhere in the UK where Government appointed private sector Approved Inspectors may be used as an alternative to the local authority as a means of gaining the necessary building regulation consents. Approved Inspectors undertake a role similar to the local authority and self-certification is not an option.

The possibility of private sector verification actually being introduced within Scotland seems remote. The policy memorandum accompanying the Bill states that, although powers will be available, Scottish Ministers have “no plans to extend their verification role into the private sector” and will only do so if issues of impartiality, accountability and access to enforcement powers can be resolved.

In the policy memorandum accompanying the above Bill the reasons why Scotland is not to be permitted Approved Inspectors are explained. It would appear that the Executive is concerned “that the Approved Inspector system has been in place in its present form only a fairly short time”, (around six years we understand) that insufficient systematic study of the system is available and that safeguards, beyond those currently provided by the England and Wales Regulations, are required to overcome conflicts of interest. In response to these concerns, Scotland is to have a system that is new and untried within the UK, which will be unique to Scottish Building Control, will suffer similar risks in relation to conflict of interest and by relying on self-certification will be inherently more hazardous.

Self-certification when used with no regard to complexity or the potential consequences of failure, is inherently dangerous taking no account of human fallibility. The current legislation dealing with structural self-certification which was introduced to Scotland some ten years ago is seriously flawed in a number of important areas. Self-certification has a place but this must be within the context of a rational assessment of risk. Fresh weight has been given to these concerns within the 13th Standing Committee On Structural
Safety (SCOSS) report issued in May 2001. Amongst the conclusions relating to self-certification contained in SCOSS report are:

1. The possibility that individuals or organisations might not be competent, or their competence may be affected by commercial or other pressures is a risk to structural safety and needs to be controlled.
2. Self-certification where failure would not have high consequences can give adequate assurance of structural safety provided that appropriate systems are in place for ensuring competence.
3. Third party independent certification is needed for safety critical aspects of design.
4. For structures whose failure has a high consequence or are innovative or unfamiliar to the project team an explicit process of risk management should be used.

Although these conclusions relate to structural safety they are equally valid to fire safety or the complex interactions that ensure energy efficiency. Though the latter is less likely to be safety critical the opportunity for mistakes occurring at the interface of building envelope and M&E systems is ever-present. It seems to us that none of these concerns are addressed by the proposed legislation which may actually work to exacerbate the risk by giving designers, and more importantly their clients, the impression that self-certification provides all the reassurance required regardless of complexity. Clients may well take a view that if self-certification is all that is required by law then they will not pay for any additional internal QA checks a responsible company may wish to introduce.

We have found no requirement for Approved Certifiers of design to have any role in site inspection or ensuring that design assumptions and details have been properly incorporated into the completed building. If we add to this the further proposal to introduce Improved Certifiers of Installation with a set of similar weaknesses to those of design certification then we have a potential for things to go seriously wrong. Verifiers retain powers for site inspection: however, their effectiveness must be diminished where there has been minimal involvement with the design process and if certification of installation is used.

In recent years the role taken by local authority building control has had to shift from plan checking to design audit in response to increasing specialisation and the attendant fragmentation of the design process. Good building control has been able to offer an overview of the design process ensuring that there are no inconsistencies or oversights. If there is to be an alternative to the local authority for the enforcement of building standards – and it is sensible that this happens – then we must ensure that whatever is put in its place is able to be as least as effective. The Approved Inspector undertakes essentially the same role as that of the local authority. The current proposals being put forward by the Scottish Executive will fragment the approvals process and be less effective.
The Institution is very concerned that by rejecting the option of Approved Inspectors Scottish Ministers are missing a valuable opportunity to achieve greater harmonisation of Building Control throughout the UK with many benefits for Scottish industry, particularly those companies who operate on both sides of the border. Scottish based members of our respective institutions are being denied equal access to provide Approved Inspector services and there is considerable anecdotal evidence that developers operating on both sides of the border would wish to have access to Approved Inspectors services in Scotland. Furthermore we believe that, experience in England and Wales has shown the introduction of Approved Inspectors to have a crucial role in delivering the Governments Best Value agenda for Building Control services.

More importantly, however, there must be a serious concern that by introducing an untried system dependant upon self-certification the safety of Scottish buildings may well be compromised and will potentially be less secure than elsewhere in the UK.

The reason for this decision given the policy memorandum are not convincing, and we are concerned that there has been little, if any, public debate on the matter. The Institution of Civil Engineers raised the issue at each stage of the consultation process and the policy memorandum quotes the RICS as being keen to highlight the benefits of Approved Inspector competition in raising the profile and funding of Building Control within local authorities and improving professional standards while providing choice and flexibility for the public and industry.

The Institution recognises that all individual professional bodies will have issues of particular interest to their members which they will no doubt wish to raise individually Committee. We believe, however, the issues raised above are of such importance to the future of Scottish Building control and all of our interests that the Institution has asked the Professional Bodies College of the Scottish Construction Industry Group to consider a joint approach. The aim of this will be to press the Executive for an amendment permitting further detailed consideration of the introduction of the Approved Inspectors. While we appreciate that the timetable set out is a comparatively limited one we do urge that this suggestion be considered at the committee stage.

Comments From Institution Of Civil Engineers

s7 Verifiers and Certifiers

General – We are disappointed that the Bill does not provide an opportunity for Scottish Ministers to introduce a system of Approved Inspectors similar to that already available throughout England and Wales.

In the policy memorandum accompanying the Bill the reasons why Scotland is not to be permitted Approved Inspectors are explained. It would appear that the Executive is concerned “that the Approved Inspector system has been in place in its present form only a fairly short time”, that insufficient systematic
study of the system is available and that safeguards, beyond those currently provided by the England and Wales Regulations, are required to overcome conflicts of interest. In response to these concerns, Scotland is to have a system that is entirely new and untried, which will be unique to Scottish Building Control, will suffer similar risks in relation to conflict of interest and by relying on self-certification will be inherently more hazardous. We find the reasons for this decision, given in the policy memorandum, unconvincing and are concerned that there has been insufficient public debate on the matter.

Our concerns with regard to an extension of self-certification were presented in detail at each stage of the consultation process. The existing use of self-certification for structural design is seriously flawed and there can be no certainty that an adequate, workable system can be devised.

We have become increasingly concerned that by rejecting the option of Approved Inspectors Scottish Ministers are missing a valuable opportunity to achieve greater harmonisation of Building Control throughout the UK with many benefits for Scottish industry, particularly those companies who operate on both sides of the border. Scottish based members of our Institution are being denied equal access to provide Approved Inspector services and there is considerable anecdotal evidence that developers operating on both sides of the border would wish to have access to Approved Inspectors services in Scotland. More importantly however we have a serious concern that by introducing an untried system dependant upon self-certification the safety of Scottish buildings may well be compromised and will potentially be less secure than elsewhere in the UK.

We would wish to see an amendment to the Bill being tabled which will introduce the opportunity for the Approved Inspector system to be available in Scotland.

s7 (5) Scottish Ministers may exercise the functions of a verifier.

Two instances of where this power may be used are given within the policy Memorandum accompanying the Bill. These are in the case of Crown exempt buildings (paragraph 51) and where local authority verifiers feel that they have insufficient experience or knowledge to properly assess the proposals. (paragraph 80)

We are concerned that in the case of Crown exempt buildings a different approach to verification will be in place north and south of the border. Defence Estates for example have recently introduced updated guidance requiring independent certification for defence contracts and have specified particular arrangements to be used within Prime Contracts. We see no advantage to introducing the proposed central body to these arrangements, which would alter the balance of risk in place under existing procurement arrangements.

In the case of insufficiently experienced local authorities we are concerned that the transfer of verification role to the central body would give rise to a conflict of interest with regard to s12 of the Bill. We understand that the
powers contained in this section to be those of adjudication, which could not be exercised independently, were the proposed central body to also be the verifier.

We foresee a further problem in relation to the requirement to audit verifiers described in paragraph 62 of the accompanying Policy Memorandum. If the central body is to take on the role of verifier then who is to audit and judge the competency of the central body to undertake this task?

We propose that the Bill be amended to remove the opportunity for Scottish Ministers to act as verifiers.

Schedule 2 s8 – Verifier not entitled to exercise function in relation to building in which it has an interest.

We seek clarification regarding the involvement of local authorities as verifiers for buildings in which they have an interest. From the definition given in s10 this could be a considerable number of properties. One option would appear to be a general direction as permitted by s8 however this raises the question of why local authority verifiers should be treated differently to private sector verifiers. Another option might be to refer all such applications to a central body however we suspect that this would require a significant size of central organisation and would run into a similar conflict of interest problem as described above.

Part 4 Defective and Dangerous Buildings

Recent events would suggest that the existing powers available to local authorities to are insufficient to control buildings from deteriorating to the point where they present a danger. We suggest that some consideration be given to how require building owners to regularly inspect the condition of their property and how this may be enforced. The possibility of giving further powers to local authorities should be considered for inclusion in the Bill.
1. INTRODUCTION

1.1 The Royal Incorporation of Architects in Scotland (RIAS) is the professional body for chartered architects in Scotland. It has charitable status and offers a wide range of services and products for architects, students of architecture, construction industry professionals and all those with an interest in the built environment and the design process.

1.2 The RIAS has been consulted in detail on the proposals; the proposed structure, procedures and powers are most welcome.

2. ISSUES

2.1 Chartered Architects have identified the following inadequacies of the current system:

- in consistencies between Local Authorities in interpretation

- in consistencies in performance between Local Authorities – some being very slow

- inhibition to innovate solutions that do not meet the Technical Standards.

- a natural reluctance by clients to challenge Building Control Departments, in cases of dispute over interpretation, as this requires referral to a Sheriff: time consuming costly – and a person with no expertise

- lack of clarity regarding Completion Certificates, which in recent years has led to a very unhealthy “stand-off” by both architects and contractors to sign the application form for issue of a Completion Certificate. Due to liability issues

- some tendencies for Local Authority officers to devote time to lay applications submitting quite inadequate applications, and, in contrast, a pedantic attitude to fully documented applications by Chartered Architects.

2.2 On the other hand, the existing system

- is well managed in many parts of the country

- requires a warrant approval prior to commencement of works: very important to inhibit rash and abortive action.
3. **THE BUILDING (SCOTLAND) BILL**

3.1 The new arrangements address all the problems, and provide enabling powers that could make the new system even more efficient and effective.

3.2 The RIAS supports the distinction between functional standards and performance requirements. This will allow innovation – increasingly important in a fast changing world, and recognising the undoubted talents of Scotland’s creative architects. As the draft Bill indicates, this should assist in addressing sustainable development objectives, in accordance with the RIAS Environment Statement (1997, recently revised). Copy enclosed.

3.3 The RIAS supports the establishment of a national central body to oversee the new system to deal with referrals in uses of doubt, to appoint verifiers (the Local Authorities and possibly others later) and to manage the approved certifiers of Design, and approved certifiers of construction.

3.4 The issue of professional indemnity insurance for any group of professionals opting to certify standards of design of a building remains to be established. The position regarding such insurance for construction professionals is extremely difficult at present, after recent hikes in premiums of hundreds of percent, alongside reduced scope of cover. Premium levels are at their highest for over 20 years, and predicted to rise further before they stabilise. Under such circumstances, obtaining cover may prove expensive.

3.5 Nonetheless, given appropriate training for a testing of competence, the RIAS believes it could work if the Executive were to bring arrangements forward for establishing approval system(s) for certifiers of design. Such systems recognise technical competence and expertise in an appropriate way.

Such arrangement could be of particular value to developers and owners who need to progress with projects expeditiously, and could have advantages for clients with multiple projects in different locations.

3.6 In similar terms the RIAS considers it appropriate at this stage to provide enabling powers for the establishment of alternative verifiers (approved inspectors), but only where the tests set out in the policy memorandum can be met.

3.7 We also support proposal for a register of Approved Certifiers of Design, and similarly for Construction.
3.8 Provisions for more consistent and accessible records, we fully support. This is especially important for property transactions. The duty on Local Authorities to provide a Building Standards Assessment is also welcomed subject, of course, to resources. Could such a function not also be undertaken on behalf of the Local Authority, by an approved certifiers of design with appropriate competence? Property transfer is the time to identify any outstanding work, when capital is available in the form of loans, and when valuations can reflect the scope of any work desirable or necessary. This thus offers perspective benefit of upgrading. (An additional incentive could relate to the provision of grants in appropriate cases).

3.9 The RIAS also supports the proposed arrangements for strengthening Local Authority powers to regularly inspect buildings, in an attempt to prevent danger and accidents. This is particularly important in multi-owned older stock. To be most effective, however, property owners and lessees should have their buildings regularly surveyed and assessed by approved certifiers – with a duty to register defects with the Local Authority.

3.10 The RIAS assisted the publication of the Tenement Handbook more that a decade ago, believing that much more could be done to courage proper maintenance of the older stock. Indeed, it was envisaged that solicitors acting for purchasers would not only set out clearly new owners’ responsibilities in this regard, but also could possible pass over a copy of this (or another) useful guidance manual. This maintenance remains an area of continuing concern and is currently subject to discussions under the Housing Improvement Task Force.

The role of Local Authorities remains extremely important nonetheless.

3.11 All in all, the RIAS welcomes this Bill, which addresses the full range of current inadequacies of the system, while contributing to its undoubted strengths. This is, we believe, due in very large part to the extensive and detailed consultation undertaken over 2½ years with all interested parties. The outcome including the Policy Memorandum, is a good example of a well-conducted and thorough consultation in the spirit of the aims of the new parliament. We very much hope the Transport and Environment Committee will assist its passage.

Sebastian Tombs FRIAS, RIBA, CIarb
SECRETARY/CHIEF EXECUTIVE

21 October 2002
SCOTTISH PARLIAMENT: TRANSPORT AND ENVIRONMENT COMMITTEE

BUILDING (SCOTLAND) BILL
WRITTEN EVIDENCE

A Response from the Royal Institution of Chartered Surveyors in Scotland
INTRODUCTION

The Royal Institution of Chartered Surveyors in Scotland (RICS Scotland) welcomes the opportunity to provide written evidence on the Building (Scotland) Bill. RICS Scotland represents some 9,000 members: 7,000 chartered surveyors, 200 technical members and 1,800 students and probationers. They practise in sixteen land, property and construction markets and are involved in all stages of a property’s life from design, through construction, repair and maintenance, to building regulations and control. Chartered surveyors work both in the private and public sectors, representing clients from a wide variety of backgrounds. Furthermore, the Institution is governed by its Royal Charter, with the objective of promoting the public interest.

RICS Scotland welcomes the broad thrust of the Building (Scotland) Bill. We have played a full and, we hope, a constructive role throughout the pre-legislative consultation process. We agree that the building standards system, which dates back to the late 1950s, requires to be modernised to ensure that it meets the requirements of the 21st century. Given that we are broadly supportive of the provisions in the Bill, our written evidence focuses primarily on the areas which continue to give us cause for concern.

PART 1: BUILDING REGULATIONS

Building Regulations

RICS Scotland welcomes the more flexible approach to the Building Regulations and technical standards which will allow Scottish Ministers to meet their obligations under the EC Construction Products Directive more easily. We further agree that the mandatory line should be drawn at the level of the functional standards. Provided that the duty holder can demonstrate that his/her method will meet the functional standard, the Institution would agree that prescriptive standards should not be required. It will be important, however, that the functional standards are clear enough for the courts to determine, if necessary, whether the design of a building has fulfilled the stated functions.

Continuing Requirements

The powers in Section 2 allow Ministers to impose continuing requirements on building owners in order that the purposes of particular provisions of building regulations are not frustrated once work on a building has been completed and the Completion Certificate accepted. This gives us cause for concern. The example given of sprinklers is interesting as currently the obligation to test and maintain a fire sprinkler system is covered by a Fire Certificate and supporting legislation. If the approach in Section 2 is to be adopted, care must be taken to ensure that the differing pieces of legislation do not conflict. One of the aims should be simplification and an ability to source all legislative requirements in one place.

We are also concerned that the powers in Section 2 will mean that new legislation can apply to buildings which were deemed acceptable previously. In exceptional circumstances this may be appropriate: if, for example, it is found that something which was permitted has unexpected side effects then it would be prudent to require changes. However, it would have to be acknowledged that a change of this nature would be the result of a previous error on the part of Scottish Ministers. The question of liability and compensation may then have to be addressed.

Building Standards Assessment
The Building Standards Assessment is, as explained in the Policy Memorandum and the Explanatory Notes, meant, in part, to replace the letter of comfort arrangements which local authorities provide at present. Although RICS Scotland acknowledges the difficulties which have arisen as a result of the inconsistencies in the letter of comfort arrangements, there is considerable concern that the BSA will not solve matters. Letters of comfort are used purely to reassure house purchasers that they will not face enforcement action after they have bought property which has no Certificate of Completion or has had unauthorised alterations carried out. There is genuine concern that the BSA will start a trend among conveyancing solicitors that all buildings being sold, especially in the residential sector, will be required to have such a certificate. As these certificates are to be assessed under current standards, only those built under current standards will comply fully. The vast majority of dwelling will fail, some significantly. We are concerned that this may make some dwellings difficult to sell, albeit that failure to comply with current regulations should not constitute a significant problem if the property was built before the regulations were in force. We question whether the Scottish Executive has assessed the effect this may have on the market.

As stated above, letters of comfort are designed to draw a line under either (a) the absence of a Certificate of Completion on historical work or (b) work identified as unauthorised historical work. A letter of comfort is then issued either as matters stand or after necessary works have been carried out—this may be the reinstatement of the building to its original condition or works to make the building acceptable. An assessment is made by the Building Standards Surveyor who, taking account of the Standards in force at the time the work was carried out and using professional judgement, decides if matters are acceptable taking current requirements into account. The letter issued then usually confirms that the local authority will not take enforcement action in respect of the absence of a building warrant or Certificate of Completion. It does not confirm that the work complies with Building Standards.

Despite criticism from the professions involved in the process, usually related to varying fees or the variation in text between different local authorities, letters of comfort have been remarkably successful in remedying the problem they were designed to solve. Consideration should therefore be given to producing a nation-wide scheme which builds upon the success of the system and standardises fees, rather than dismantling it completely. There is perhaps even a place for a two-tier framework comprising an assessment which resolves the conveyancing concern and one which provides a broader assessment against current standards, with a fee structure to suit.

PART 2: APPROVAL OF CONSTRUCTION WORK ETC.

Verifiers

RICS Scotland believes that verification must be independent and that verifiers must fulfil certain criteria in relation to transparency, accountability, consistency and enforcement. In this respect, verifiers must be independent of, and separate from, the organisation they are verifying. In view of these requirements, RICS Scotland considers that local authorities are, arguably, best placed to fulfil the role of verifiers, at least for the foreseeable future. Local authorities are independent, accountable and competent. More importantly, however, they also have powers of enforcement.

Nonetheless, we have been persuaded by the arguments put forward during the consultation process in favour of opening up the system to the private sector. We now acknowledge that opening up the role of verification to the private sector will, through increased competition, contribute to improving the professionalism of the building standards profession, thereby improving standards and quality of delivery and service. Of course, care will have to be
taken to ensure that standards do not, on the contrary, fall as a result of too much competition over fees.

On balance, therefore, RICS Scotland acknowledges the benefits of extending verification beyond local authorities in the longer term. To address our concerns about the private sector taking on a role which is in the public interest, we would stress that the auditing process of verifiers must be rigorous. In this respect, verifiers, including local authorities, should be required to have a recognised level of competence to perform their function properly. Such a recognised level of competence might include qualification as a chartered building or building control surveyor. Care will also have to be taken to ensure that the private sector does not “cherry pick”, thereby leaving the less lucrative work to local authorities.

Although we do agree that verification should, in time, be extended beyond local authorities, we remain unsure, how non-local authority verifiers will have ready access to enforcement powers. We would therefore welcome reassurance about this aspect of the verification process.

Building Warrants

We note that a building warrant application is to be made by the “owner”, the definition for which is given in Section 51 of the Bill. There is considerable concern that restricting warrant applications to the owner only is unnecessarily restrictive. Section 6(1) of the current states that “No person shall (a) in any place conduct operations for the construction or demolition…, or (b) change the use of a building - unless there has been obtained from the local authority a warrant.” There is no requirement under this legislation to identify the relationship between the applicant and the property that is the subject of the warrant. In addition, there is no evidence, anecdotal or otherwise, to suggest that an application being made by a person or body other than the owner has been problematic over the 40 years or so that the legislation has been in force.

In response to our concerns we have been advised that under Scots Law a tenant is an agent for the owner. However, we are unsure whether this is truly the case. It is possible that a tenant may be an agent for an owner if they have been granted an agency to operate on the owner’s behalf. To establish whether this is indeed the position, it would be necessary for the Verifying Authority to obtain certification from the owner confirming this. This would be time consuming; could hold up the lodging of otherwise competent applications; and has obvious resource implications for the Verifier.

Furthermore, it does not deal with the matter of “contingent” ownership, where a person or body may wish to obtain approval before committing themselves to purchasing the property. This is extremely common in the planning process and can also apply in the building warrant process. There may also be conflicts of interest where a tenant seeks to carry out work and, as is quite common in the local authority housing sector, the local authority (as landlord) will not grant consent until a warrant is approved. This would equally occur in the private sector where a private landlord would not wish to become involved in the process of obtaining warrant approval (preparing plans, paying fees, recovering fees from tenants etc) but would be quite content to grant their consent after warrant approval.

In the commercial sector, current property tenures, including full repairing leases, holdings of finance and lending institutions, offshore finance companies and international holding companies will cause significant difficulties in terms of identifying the actual “owner” of some buildings. In many instances, the tenant will be fully responsible for building work and there will be little or no involvement of the owner. This will apply, for example, in relation to shopping centres, speculative office developments and advance factories, where the landlord, as the main developer, provides a shell and each lessee or tenant fits out the
premises to his or her requirements. Such work might include store rooms and other partitioning, ceilings, wall linings, shop fronts, ventilation systems and, in the case of shop units which become restaurants or licensed premises, customer toilets and food preparation areas, all of which will come within the scope of the Regulations. In such cases, the landlord will apply for the warrant for the shell and each tenant will apply, in due course, for a warrant for the shopfitting. Requiring the owner to apply for the warrant may therefore be unnecessarily onerous.

It is interesting to note that the equivalent legislation in England and Wales is not so restrictive. There, the **owner or occupant** are the parties legally entitled to apply for the warrant. If change is to be made, it should perhaps reflect practice south of the border. At least then, the whole of the UK will be in harmony.

**Completion Certificates**

Logically, as the end part of the warrant process, if responsibility for building warrant application changes (Section 9), then Section 16, which deals with completion certificates, should also change to reflect the same arrangements.

**PART 4: DEFECTIVE AND DANGEROUS BUILDINGS**

We note that Section 25 provides for local authorities to serve a notice on an owner of a building to rectify defects in order to bring the building into a reasonable state of repair, having regard to its age, type and location. We further note that this power replaces that in Section 87(1) of the Civic Government (Scotland) Act 1982. We welcome this rationalisation of repairs notices as we had previously expressed concerns about the wide range of legislative powers available in respect of serving repairs notices.

In respect of dangerous buildings, we note that local authorities are obliged under Section 26 to remove any occupants who are at risk from dangerous buildings in order that necessary work, possibly including demolition, can be carried out. We suggest that similar powers should be given to local authorities to enable them to evacuate defective buildings as repair work might be dangerous.

**PART 5: GENERAL**

**Powers of Entry, Inspection and Testing**

RICS Scotland agrees that local authorities should be given powers to enter and inspect buildings and premises and to carry out tests on materials.

**Expenses**

Schedule 6 of the current Act provides for the recovery of expenses by **Charging Order**. Section 39 of the Bill does not make provision for this method of recovery of expenses incurred by local authorities. While we agree that the making of such an Order is the last resort when attempting to recover expenses, it should be retained as an option.
INTRODUCTION

What is NHBC?
NHBC is the leading warranty and insurance provider for new homes in the UK. We were established over 65 years ago as a non-profit distributing company. As such NHBC has no shareholders, but is governed by its seventy-one member council which includes representatives from the Local Government Association, Architects, Consumer Groups, House-builders and all stakeholders with an interest in raising the standards of new homes.

Our primary purpose is to help raise standards in the new house-building industry and provide consumer protection for new homes. We achieve this by setting, monitoring and enforcing standards, offering our Buildmark cover, and by providing added value services to the industry.

Experience and Expertise
NHBC has inspected and provided warranty and insurance protection on almost 6 million homes in the UK – that's over 30% of the existing UK private sector housing stock. Almost 85% of new homes built in the UK are registered with us.

Our 300 inspectors, supported by professional engineers, surveyors and other technical experts, carry out 750,000 inspections on new homes under construction every year and almost 1.6 million households are currently protected by our Buildmark cover.

NHBC is now the largest single provider of Building Control in the UK. Since we were appointed in 1985 by the Secretary of State as an approved inspector we have provided our Building Control Service on more than 1 million properties, in residential and commercial developments, in England and Wales.

NHBC also provides a range of complementary and added value services to the industry including Technical Advice and Information, Health and Safety, Training and Energy Rating Services. We are currently the largest provider of construction management training services in the UK.

NHBC Working in Partnership
NHBC's experience, knowledge and unrivalled understanding of the UK house-building industry, means it is a respected voice and we work with a range of government and industry bodies and with local authorities to improve the standards of new homes and achieve regulatory consistency. These include the Building Regulations Advisory Committee (BRAC), the Building Control Performance Standards Advisory Group (BCPSAG) and the Construction Industry Council Approved Inspector Register (CICAIR). NHBC was a founder member of the Association of Consultant Approved Inspectors (ACAI), and also of the Association of Consultant Approved Inspectors/District Surveyors Association (ACAI/DSA) Liaison Group. We also served on the steering group which looked at the provision of space in Scottish housing following the abolition of mandatory space standards.

An International Model
Internationally we are a model of best practice as a world class warranty provider for the new house-building industry. Countries from around the world have consulted NHBC for advice and information. NHBC is also an influential voice in Europe and contribute to European technical standards work through the European Committee for Standardisation (CEN) and the European Organisation for Technical Approvals (EOTA). We are also a member of the Consortium for European Building
Control (CEBC) and provide the technical secretariat for the European Union of Developers and House-Builders (UEPC) and the Association of European Home Warranty Organisations (AEHWO).

1. **BUILDING (SCOTLAND) BILL**

**General Comments**

NHBC has had dialogue with the Scottish Executive during the consultation for drafting this Bill and in principle we welcome its aim to modernise the Scottish Building Control system.

We are particularly pleased to note the proposed powers to enable Scottish Ministers to appoint verifiers (and approved certifiers), including from the private sector, and importantly that the Bill appears to propose a single generic class to include all verifiers, both local authority and private sector.

Beyond that and although we would wish to comment more fully, it is difficult to do this meaningfully since Section 7 and Schedule 2 are set out only in the broadest of terms. This detail ought to be included in the Bill and perhaps this is a point that the committee would wish to pursue.

However on the general proposal in the Bill to appoint private verifiers, the choice of service provider opened up to users of building control in England and Wales by NHBC’s involvement since 1985 has brought a range of benefits. These include improved speed and efficiency in processing applications, and a new helpful attitude from service providers in general, aimed at positively facilitating the building process. There have also been demonstrable gains in consistency due in particular to the introduction, initially by NHBC, of nationally acceptable Type Approvals for repetitive designs.

Our support for the proposals in the Bill would, in part, therefore, presume that Scottish users would be offered these choices and the other benefits including official integrated status for type approvals. However, the Bill broadly remains silent on this.

In addition during the consultation for the drafting of this Bill we commented on the need for official oversight of verifiers by an independent national body responsible for the competence of all verifiers, whether public or private. We challenged certain assertions made during the consultation process on this, urging that verifiers from both sections be judged against common standards for competence and be audited and monitored uniformly. There are no explicit requirements in the present Scottish system to do this and it is not referred to in the Bill. It is essential in our view, that this is included so as to ensure even-handedness and that all verifiers are made fully responsible in their own right and answerable to Scottish Ministers. Additionally no verifier should be subject to processes allowing intervention from other verifiers who are not involved in that particular project.

For reasons of practicality, we think the Bill should provide for verifiers to act, with the owners agreement, as agents on behalf of the owner and to show compliance direct to the verifier.

With very small projects we would recommend a simplified approach which would be more flexible rather than the full building warrant route.

This concludes our general comments, following are more detailed comments which contain some questions which we hope will be of assistance to the committee. We have included these in order to try and ensure that the Bill is properly detailed in every respect and to enable it to be effectively considered and fully achieve its aims.

We welcome the opportunity to address the committee and explain any of these comments, or indeed any aspect of our consultation responses, in more detail.
2. Comments on the text of the Bill

Section 1 (1)
One way of demonstrating sustainability might be by achieving a rating such as through BREEAM or EcoHomes. This is more a measure of actual or potential performance rather than a matter of "design, construction, etc". There remains a question as to whether the powers proposed are sufficient to encompass such ratings and indeed other schemes not yet devised, but falling within the general field of "conservation of natural resources and protection of the environment".

Section 2 (4)
It is unclear in this section as to whether the proposal as worded would allow ongoing controls (eg in the field of energy conservation and sustainability) to be applied to the fabric of the building and not just to its services.

3. Section 4
Functional Regulations do not appear to be explicitly provided for and in consequence the function and status of the guidance documents may not appear clear. Therefore there remains a question over how the powers would be used, and if they could be deemed to imply prescriptive requirements. Also would the powers allow Scottish Ministers to approve guidance documents they had not issued themselves, such as the "horizontal" BCA/NHBC Basements for Dwellings Approved Document and the TRADA Intermediate Timber Floors Approved Document in England and Wales?

3.1 Section 9
We would welcome clarification as to how a verifier, who is not the local authority, is to proceed if they are not able to agree that the work they have been verifying complies and where the owner or builder refuses to correct it. Will it be for regulations to describe how they divest themselves of the project and refer it to the local authority for enforcement action? And would such a referral be to the Local Authority?

Also would the Regulations deal with situations such as where an owner wished to change verifiers for example, if they couldn't get on with each other?

Section 12 (1)
It ought to be possible for either party to make a referral to Scottish Minister without the agreement of the other party.

Section 13 (5)
It seems neither implicit nor explicit that an inspection of the actual works may be necessary.

Section 15 (2)
Should the "reckless" alternative also be provided for as in (1)?

Section 17
How would a verifier reject a certificate that was correct in relation to the matters certified but contained other, for example, clerical errors?

How would work that was stopped in "mid flight" with no certificate from the owner be dealt with?

Section 19 (2)
Again, is the "reckless" option needed?

Section 21
For this purpose, the definition of "the public" would seem to need to include verifiers and certifiers who are not local authorities.

It would be beneficial if this register were available on the world-wide-web and that, if necessary, provisions for this be made in the Bill.

The giving of notices by e-mail or other electronic means might also be beneficial and likewise, if necessary provisions for this be made in the Bill.

Section 22 (5) and Section 24 (3)
It would seem appropriate here, as everywhere else, for the owner to be freely able to choose public or private sector verifiers.

Section 24 (2)
Are verifiers obliged to accept appointments/certificates in these cases?

Section 24 (3)
Please see above.

Section 25
A clear definition as to what is meant by "defective" is essential. For example, is it "Where it appears to a local authority that there is a non-conformity with building regulations imminently prejudicial to the health and safety"?

Also to avoid ambiguity a clear definition of a "reasonable state of repair" is necessary.

Section 26 (2)
It might seem more appropriate only if the occupants were "immediately" endangered?

Are the powers sufficient for a local authority to install basic protective measures to the building and contents without getting themselves surcharged for going beyond removing the danger? (eg, plastic sheeting against the weather where an enclosure had to be demolished).

Section 36 (2)
Will the powers extend to private sector verifiers or will they need to direct the work to the local authority. If so, how will this be done?

Section 38
Unless the verifier is to be rendered impotent, it needs to be made clear that the applicant pays the costs. However the Bill does not say anything about this. The demands of the verifier should be "reasonable in the circumstances".

3.2 Section 42
Appeals etc on technical issues in our view really ought to be to a professionally competent tribunal or suchlike, or to an independent national authority, but not to a court, unless the court were required to appoint suitable advisors.

Section 44 (1)
The insertion of "knowing" consent and "knowing" neglect might make this section fairer. Accidental negligence is relatively common. Recklessness in this context is properly punishable.

3.3 Section 51
A definition, for the purpose of Building Regulations, seems essential.

Schedule 1, Paragraph 5 (2)
If it was desired to include sustainability ratings or other similar measures, it appears to us that sustainability, whole life cycles and other attributes such as conservation of natural resources and of the environment would need referencing.

If you require any further information please do not hesitate to contact:

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