TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA

31st Meeting, 2002 (Session 1)

Wednesday 13 November 2002

The Committee will meet at 9.15 am in Committee Room 2 to consider the following agenda items:

1. **Declarations of Interests:** The Convener will invite the new member of the Committee to declare any relevant interests.

2. **Items in private:** The Committee will consider whether to take agenda items 3 and 10 in private.

3. **Rail Inquiry:** The Committee will consider contract arrangements for its adviser on the Rail Inquiry.


5. **Building (Scotland) Bill (in private):** The Committee will consider possible lines of questioning for the Deputy Minister for Social Justice.

   At approximately 10 am

6. **Water Environment and Water Services (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 1).

7. **Subordinate Legislation:** The Committee will consider the following negative instruments—

   The Local Authorities’ Traffic Orders (Exemptions for Disabled Persons) (Scotland) Regulations 2002, (SSI 2002,450)

   The Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2002, (SSI 2002,451)
8. **Building (Scotland) Bill:** The Committee will take evidence as part of its consideration of the Bill at Stage 1 from—

   Hugh Henry, Deputy Minister for Social Justice

   Lorimer Mackenzie, Building Bill Team, Building Standards

   Paul Stollard, Technical Standards and Review, Building Standards.

9. **Cairngorms National Park:** The Committee will consider a paper from the Convener.

10. **Building (Scotland) Bill:** The Committee will consider the possible contents of its Stage 1 report on the Bill.

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Callum Thomson
Clerk to the Transport and the Environment Committee
Room 3.5, Committee Chambers
0131 348 (8)5208
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The following papers are attached for this meeting:

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Copy of the instrument (plus executive note)  
(*Agenda item 7*)

TE/02/31/7

Paper from the Convener  
(*Agenda item 9*)

TE/02/31/8

Paper from the Convener on the possible contents of the Committee’s Stage 1 Report on the Building (Scotland) Bill (private paper)  
(*Agenda item 10*)

TE/02/31/9

Report of the Social Justice Committee on the Building (Scotland) Bill (private paper)  
(*Agenda item 10*)

TE/02/31/10

Amended Submission from RIAS  
(*Agenda item 10*)

TE/02/31/11

Additional Information from RIAS  
(*Agenda item 10*)

TE/02/31/12

Submission from the Chartered Institute of Building  
(*Agenda item 10*)

TE/02/31/13

**Papers not circulated:**

**Agenda item 4**
Members are reminded to bring a copy of the Executive’s 2003-2006 Spending Proposals: “Building a Better Scotland” and the correspondence between the Convener and the Minister for Enterprise, Transport and Lifelong Learning on the 2003-04 transport budget. These documents were circulated as part of the papers for Meeting 27. Members are also reminded to bring with them the extracts from the Scottish Executive publication ‘Closing the Opportunity Gap’ Scottish Budget for 2003 –2006 and from the Scottish Executive Draft Budget 2003–04 which were circulated with last weeks meeting papers.

**Agenda item 5**
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).

**Agenda item 6**
In addition to the above papers, the Water Environment and Water Services (Scotland) Bill and Accompanying Documents are also relevant to this meeting. Copies of the Marshalled List of Amendments and the groupings of amendments will be available at the start of the meeting in Committee Room 2.
On 24 October 2002 the Committee asked the Executive for an explanation of the following matters.

"In regulation 4 it is stated that these Regulations apply to any order made under sections 1, 9, 35, 45 or 46 of the 1984 Act. However, regulations 6 and 7 purport to apply the regulations to orders made under section 6. It is not clear why, therefore, a reference to section 6 has been omitted from regulation 4. It would assist the Committee to have the Executive’s views on why a reference to section 6 of the Road Traffic Regulation Act 1984 has been omitted from regulation 4 and what effect this will have given references to that section in regulations 6 and 7."

The Scottish Executive’s response is as follows:

This Instrument revokes the Local Authorities Traffic Orders (Exemptions for Disabled Persons) (Scotland) Regulations 2000 (SSI 2000/60). It makes a number of substantive amendments to the 2000 Regulations hence a revoking instrument rather than an amending instrument was considered appropriate. The references to section 6 of the 1984 Act as contained in regulations 6 and 7 were found in the 2000 Regulations. These references were carried forward into the present instrument. The Executive accepts however that the references to section 6 of the 1984 Act as contained in regulations 6 and 7 are erroneous and could be misleading when read with regulation 4. In the circumstances the Executive will bring forward an amending instrument to delete the references to section 6 of the 1984 Act in regulations 6 and 7.

Scottish Executive Development Department
28 October 2002

The Local Authorities Traffic Orders (Exemptions for Disabled Persons) (Scotland) Regulations 2002, (SSI 2002/450)

Question
30. In regulation 4 it is stated that these Regulations apply to any order made under sections 1, 9, 35, 45 or 46 of the 1984 Act. However, regulations 6 and 7 purport to apply the regulations to orders made under section 6. It was not clear to the Committee why, therefore, a reference to section 6 has been omitted from regulation 4. The Committee asked the Executive to explain why a reference to section 6 of the Road Traffic Regulation Act 1984 has been omitted from regulation 4 and what effect this will have given references to that section in regulations 6 and 7.

Answer
31. In its reply, reproduced at Appendix 3, the Development Department accepts that the references to section 6 of the 1984 Act as contained in regulations 6 and 7, which were carried forward from SSI 2000/60, are erroneous and could be misleading when read with regulation 4. In the circumstances, the Department will bring forward an amending instrument to delete the references to section 6 of the 1984 Act in regulations 6 and 7.

Report
32. The Committee draws the attention of the lead committee and the Parliament to the instrument on the ground of defective drafting, acknowledged by the Department.
SSI Cover Note For Committee Meeting


Type of Instrument: Negative

Meeting: 31st meeting, 13 November 2002

Date circulated to members: 4 November 2002

Motion for annulment lodged: No

T and E deadline to consider SSI: 18 November 2002

SSI drawn to Parliament’s attention by Sub Leg Committee: No
Subject: Instruments on the Cairngorms National Park

Meeting: 31st Meeting, 2002

Author: Bristow Muldoon MSP

Introduction

1. Fiona McLeod has written to me requesting that the Committee review the Cairngorms National Park Designation Order. Fiona’s letter is attached at Annexe A.

Background

2. Firstly, it should be stated that it is expected that two instruments will be laid—

- draft designation order
- draft elections order.

3. Both instruments are expected to be subject to the affirmative procedure. Neither instrument has been laid so far.

4. The Loch Lomond and the Trossachs National Park Orders were referred to the Rural Development Committee as Lead Committee. No other committees were named.

5. It should be stated that Standing Orders allows for the possibility of the Parliament deciding that the instrument(s) should be considered at a meeting of the Parliament rather than by a committee.

6. On the basis that a lead committee considers the instruments, it is expected that the Minister for the Environment and Rural Development or his deputy will lodge a motion proposing that the lead committee recommends that the instrument be approved. Standing orders allows for a debate on this motion to last for up to 90 minutes.

7. If the lead committee agrees to the motion, the Parliamentary Bureau will propose that the Parliament approves the instrument.

8. If the lead committee disagrees to the motion, the instrument falls.

Work done by the Rural Development Committee

9. The Rural Development Committee has spent a considerable amount of time considering a number of issues relating to the proposed Cairngorms National
Park (including, as Fiona states in her letter, a meeting in Kingussie). Following that meeting, and having already taken evidence from the Deputy Minister for Environment and Rural Development and his officials, the Convener of the Rural Development Committee wrote to the Deputy Minister with a number of detailed recommendations relating to the consultation process, the proposed boundary of the park and – most pertinently to the work of this Committee – planning powers. Alex Fergusson’s letter is attached at Annex B.

Timings

10. The Lead Committee has 40 days, from the date an affirmative instrument is laid, to report to the Parliament. But without knowing the date on which the instrument will be laid, it is difficult to consider how Fiona McLeod’s suggestion would impact on the work programme of the Transport and the Environment Committee.

11. It is clear, however, that the Committee will be considering Stage 2 of either the Water Environment and Water Services (Scotland) Bill or the Building (Scotland) Bill [assuming it is passed at Stage 1] for each week until Christmas (and possibly for some time in the New Year).

12. In addition to this heavy work programme, the Committee has a number of outstanding petitions to consider plus several SSIs (including an affirmative one on GM crops).

13. As such there does not appear to me to be any meetings at which such a review of the instruments could easily be slotted in.

Recommendation

14. In light of the extensive work already done by the Rural Development Committee on this subject and the commitments already placed on this Committee’s work programme, I do not consider that this Committee should spend committee time considering a review of the orders.

15. However, I recognise that the planning issues which are raised in relation to this subject are of relevance to this Committee’s remit. Accordingly, it may be appropriate for the Committee to appoint a reporter to attend the meeting of the Rural Development Committee at which the motion(s) on the instrument(s) are laid.

Bristow Muldoon
Convener

8 November 2002
Annex A

Bristow Muldoon
Convener
Transport & Environment Committee

5 November 2002

Dear Bristow

Cairngorm National Park Designation Order

I understand that there has been a consultation on the draft Designation Order for the Cairngorm National Park and that the Rural Development Committee has undertaken a public meeting on this at Kingussie.

In light of the evidence garnered by these consultations, the impact this Order will have on the natural environment of a large swathe of Scotland and the implications for planning I would suggest that the Transport & Environment Committee should, within its remit, find time to review this Order.

I look forward to this item appearing on the Committee agenda at the earliest opportunity.

Yours sincerely

Fiona McLeod MSP
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ANNEX B

RURAL DEVELOPMENT COMMITTEE

Edinburgh
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Allan Wilson MSP
Deputy Minister for Environment and Rural Development
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EH14 1TY

14 October, 2002

PROPOSALS FOR THE CAIRNGORMS NATIONAL PARK

As you will be aware, the Rural Development Committee has held several evidence sessions on these proposals. The Committee began its evidence taking by hearing from you and from Scottish Executive officials in Edinburgh, and also held a very well attended meeting in Kingussie on 11 October, where it heard from a wide range of local and national interests.

You indicated in your evidence on 1 October that you would take on board the views of the Committee provided that this information was available as soon as possible after our meeting in Kingussie. I am therefore writing to convey to you the views of members on the draft designation order. I am grateful for your assurances that the views of the Committee will be given serious consideration, and that the views outlined in this letter will be given the same status as a formal Committee report. I am sure that you will find the full report of the meeting in Kingussie of great interest, and will therefore forward the Official Report and the transcript of the informal public session to you under separate cover when they become available tomorrow.

The Consultation Process

The Committee notes the enormous resources that SNH put into consulting the local community before drawing up its recommendations for the Park, and the widespread support for that consultation process. The Committee also notes that SNH provided the full rationale behind the recommendations made so that the local community
could follow the reasoning behind its decisions. By contrast, the Committee heard a number of submissions that the local community felt disenfranchised by the consultation process that the Scottish Executive conducted. **The Committee is disappointed that the Executive did not provide a fuller explanation of the rationale behind the draft designation order. The Committee believes that the Executive should have provided a full explanation of why the draft designation order differs from the proposals put forward by SNH, especially in respect of the boundary of the proposed park.** The Committee also notes concerns expressed by local groups regarding the timing of the consultation, and the timeframe for the implementation of the Park, which many local groups felt was too rushed, with the result that they felt excluded from the process.

**The Proposed Boundary of the Park**

The Committee heard concerns from a number of groups and individuals regarding the proposed boundary. A number of specific points were put forward, and these are contained within the *Official Report* of the meeting. In general, communities were of the view that the proposed boundary was illogical and had not been considered sufficiently. Concerns were expressed that the boundary cut through a number of communities and natural features, whilst in other cases it excluded some areas that were felt to have a strong case for inclusion. There appeared to the Committee to be almost unanimous dissatisfaction with the proposed boundary, along with a degree of bewilderment due to the fact that the Executive had not provided clear and transparent reasons for its departure from the recommendations of SNH. The Committee believes that the approach of SNH to developing the boundary was logical, transparent and took on board the views of the community.

**The Committee therefore unanimously recommends that the Scottish Executive adopt the boundary proposed by SNH, with one exception, which relates to the Parish of Laggan.** The Committee heard evidence on Petition PE 555 from the Laggan Farmers Action Group, which called for the Parish to be included within the Park and the Committee unanimously agreed to endorse this petition. It is understood that the boundary proposed by SNH did not include the entire area around Laggan. **The Committee therefore recommends that the Executive adopt the SNH boundary, but with the inclusion of the whole Parish of Laggan, including the headwaters of the Spey.**

**Planning Powers**

The Committee heard a wide range of evidence on the subject of planning powers for the Park, both from local communities, and from local authorities who currently have responsibility for planning issues in the area. The Committee notes that these local authorities have built up expertise in planning issues, and are developing a track record of working in partnership with local communities. The Committee believes that it is crucial to retain the involvement of local authorities in planning issues, and to
encourage the joint working approach. **The majority of the Committee**¹ therefore recommends that the local authorities and the national park authority should jointly produce the structure plan for the park. Such an approach will ensure that the local authority plans will be consistent with the structure plan for the park area. **The majority of the Committee further recommends that local authorities should retain overall responsibility for development planning and development control, but that they should be encouraged to work closely with the national park authority in this respect. The national park authority should also retain the ability to call in applications that are of general significance to the aims of the park.**

The Committee is conscious that many people believe that the national park authority should be the planning authority for the area. (Over 80% of the submissions to the latest consultation thought that the planning powers for the park should be the same as the arrangements for the Loch Lomond and the Trossachs national park). However, the Committee is also aware of local concerns that transferring these powers to the park authority could act as a disincentive for development in the area. **The Committee therefore recommends that these planning arrangements should be monitored and that they should be reviewed after a period of 7 years, at which point the views of the community should be taken on board, with a view to making any necessary changes.**

On the subject of planning powers, the Committee heard a great deal of evidence regarding the need for affordable social housing in the area. **The Committee believes that the provision of affordable social housing should be a priority both for local authorities and the national park authority, and looks to the Executive to provide suitable guidance and support to the planning authorities to ensure that that occurs.**

**The Committee also notes the concerns of farmers within the park, and looks to the Executive to develop the appropriate land management schemes to ensure that farmers can capitalise on the opportunities afforded by the creation of the park.**

The evidence that the Committee heard in Kingussie confirmed to us that the success of the park is dependent upon the national park authority securing the trust of local residents and business interests. It is crucial that the park authority acts to enable local interests to achieve the aims and objectives developed by local communities rather than imposing its views upon them. The Committee also heard evidence that it is essential that the park authority works to complement local businesses rather than acting in competition with them. **The Committee urges the Executive to take on board the views of the local community and to work as closely with them as possible in the creation and implementation of the Cairngorms National Park and the national park authority.**

¹ Mike Rumbles MSP dissented from this position.
I hope that the views of the Committee will be of assistance to you in making decisions regarding the final draft designation order. The Committee hopes to see these views reflected in the order when it is laid before Parliament and looks forward to further scrutinising the order in due course.

Yours sincerely

ALEX FERGUSSON
Convener
Rural Development Committee
BUILDING (SCOTLAND) BILL: STAGE 1 EVIDENCE
RIAS EVIDENCE
To The Transport and Environment Committee
Scottish Parliament

1. INTRODUCTION

1.1 The Royal Incorporation of Architects in Scotland (RIAS) is the professional body for Scotland’s 3000 chartered architects. They work in 1000 businesses, mainly very small, as well as in areas of industry from housebuilding to local and central government.

The RIAS 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:

- inconsistencies between Local Authorities in interpretation
- inconsistencies 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 applicants 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 Environmental 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 cases 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 arrangements 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 Under the new system it will be the owner who issues the certificate of completion not the verifier. He will certify that the works were carried out in accordance with the building warrant and, as completed, comply with the building regulations. It will then be up to the verifier to accept that certificate if they are satisfied, after reasonable enquiry, that the matters certified are correct. Under the proposed system there is a provision for the owner to accompany such a certificate with certificates from approved certifiers of construction certifying, for those parts of the construction for which they are approved, that they comply with the building regulations. Such certificates are to be conclusive as to what they certify. However, that still leaves uncovered:
(a) those parts of the construction for which there is no approved certifier of construction; and
(b) the certifying of compliance with the building warrant.

This process will require careful establishment and testing, to avoid pitfalls.

3.7 We consider that although making the owner the duty-holder should bring clarity to the system, some arrangements will need to be put in place to ensure that this does not slow down the process. Absentee or overseas owners may be difficult to contact; tenants and leaseholders in commercial premises wishing to make internal alterations should not be inhibited from doing so.

3.8 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.

3.9 We also support proposals for a register of Approved Certifiers of Design, and similarly for Construction.

3.10 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 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 prospective benefit of upgrading. (An additional incentive could relate to the provision of grants in appropriate cases).

3.11 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.

3.12 The RIAS assisted the publication of the Tenement Handbook more than a decade ago, believing that much more could be done to encourage 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 possibly 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.
3.13 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, MCIArb
SECRETARY/CHIEF EXECUTIVE

21 October 2002 (amended 06 November 2002)
Our ref: 1.P.A

06 November 2002

Alastair Macfie  
Senior Assistant Clerk  
Environment & Transport Committee  
Room 3.5  
Committee Chambers  
Scottish Parliament  
EDINBURGH  
EH99 1SP  

Dear Mr Macfie

**THE BUILDING (SCOTLAND) BILL: QUERY**

Further to the issues raised by Des McNulty MSP at the hearing on 30 October, regarding issues of responsibility for, and non-completion of works outwith the curtilage of buildings, I enclose the following observations.

The policy in relation to Building Regulation (as opposed to planning regulation where the community has an input) has been to give people freedom to carry out work on their own land as they wish subject to meeting minimum standards on a number of objectives (section 1).

The standards have therefore previously not attempted, except in minor ways, to regulate the way the buildings are used (there are now proposals to have continuing obligations regarding specified services, fittings and equipment) nor to regulate development outwith the curtilage of the building.

There is also an overlap in relation to such matters as utilities where the utilities regulate the equipment installation to which they will supply (water authorities under the Water Regulations stipulate the standard of materials and design used and provide for Authorised Contractors and similar provisions apply to gas installations).

Up to now there has been a warning on the building warrant application that it is not the only consent required. This perhaps needs to be made wider and more explicit.
Where works are to be adopted by the local authority or are to be used by public utilities the local authority or public utilities need to set the standard for their construction and to have the right of rejection. This matter is best covered in agreement between the developer, owner or user and the service provider. In many cases where roads and footpaths are constructed by developers for adoption by the Local Authority, the authority demands a bond to cover non-completion. We are currently not aware of any problems with this approach.

Because Building Standards are minimum standards for particular classes of buildings there can also be a need for further requirements where particular specialised uses are envisaged (for example licenses under the Civic Government (Scotland) Act).

The RIAS recommends that the standard and scope of the of new building regulations should be similar to the present regulations. There is enough change to the system in introducing a new scheme without making major changes to the scope and nature of the matters covered at the same time.

It is up to designers to make sure that their design complies with any statutory regulations or requirements which apply to the use or uses to which their design is to be put (provided they know of those uses).

I trust this is helpful.

Yours sincerely

Sebastian Tombs  FRIAS RIBA MCIArb
SECRETARY/CHIEF EXECUTIVE
CIOB In Scotland

Response to Questions on the Building (Scotland) Bill raised by the Transport and the Environment Committee of the Scottish Parliament

1. Do you think the Building (Scotland) Bill could be improved? If so, can you briefly outline what changes your organisation would like to see and explain the reasoning behind these proposals?

The Bill is a good base for moving forward with the provision of Building Control services in Scotland. It is flexible and allows Ministers to develop the service without further legislation. The CIOB would not propose changes to the Bill and feel it provides adequate flexibility to encourage innovation and flexibility of design in the new hierarchy of Building Standards, providing minimum functional standards in the form of Mandatory Regulations, supported by non mandatory performance requirements and specifications. The provision to allow the introduction of private sector Verifiers and Certifiers within the system provides for significant future development of the service once the checks and procedures for such services are developed.

2. Several commentators have raised concerns about inconsistencies in decision making between local authority building control departments and poor performance by some of these departments. In your opinion will the proposals in the Bill remedy these concerns?

CIOB would echo these concerns to a degree. However, there are legitimate differences in practices and building details in the various Scottish Regions to account for their particular Microclimates and flexibility needs to be maintained to cater for this.

The proposals in the Bill will not remedy these concerns in itself, but does provide for the systems and procedures to follow that could effectively address them. In particular, the possibility of Verifiers working across Local Authority boundaries, whether they are private sector or LA providers, will bring consistency. The element of choice of the provider of this service is vital. The theory is that competing verifiers must not compete on the standard of technical rigour and acceptance but on the levels of response and guidance they provide in working with the design team. The providers that enhance the design process, whilst maintaining the appropriate level of rigour in their checking process, must be encouraged to flourish without the barrier of LA boundaries. The provision for Certifiers will also work in this direction provided that the appropriately qualified professionals can exhibit their expertise and verify their decision-making processes.
3. The Bill gives Scottish Ministers the power to appoint private sector verifiers. However, there is no mention of a system for monitoring these, or local authority, verifiers. Do you think a monitoring system should be set out on the face of the Bill? If so, what form do you think it should take?

A monitoring system is vital but we believe it should not be part of the Bill. Like the minimum functional standards set out in the Regulations, the system for monitoring should be mandatory, to all Verifiers. But to include it in the Bill would, we believe, detract from the flexibility of the new system of regulation. The monitoring process needs to have a degree of flexibility to allow it to develop as the system itself develops and the involvement of independent Verifiers and Certifiers grows. There is no doubt a monitoring process is crucial in achieving a consistent and appropriate level of technical verification and level of service. It should maintain a degree of stability over a period of time, but review will be inevitable and the provision for Ministers to make this review without restructuring the legal framework of the Bill is, we believe, important.

4. The Bill creates a building control system unique to Scotland, although many large developers work across the UK. Would you support the extension of the system of approved inspectors, used in England and Wales, to Scotland as opposed to the proposals in the Bill? If so, why?

The Approved Inspector system has been in operation and developed in England & Wales for some time now. It has provided success in the areas of choice and promoted the ideas of competing on levels of service rather than relaxing levels of technical compliance. This is to be applauded. The number of AI's is limited to those with the range of technical expertise and inspection skills in sufficient numbers to be able to provide the service, not to mention the level of financial indemnity to cover their operations. There is a strong argument for providing a consistent approach to the regulatory process throughout the UK, especially as many within our industry, both large and small, work north and south of the border. The introduction of AI's has undoubtedly improved levels of cooperation and consistency in the regulatory process in England & Wales and we should adopt many of the principles of their system in Scotland.
5. The Bill appears to require the owner to apply for a building warrant, amendment to warrant and completion certificate rather than allowing an ‘agent’ to carry out these tasks, as is currently the case. Does your organisation have any concerns about this change?

There are some reservations on this issue. The present system allows the owner to employ specialist advice and guidance from a construction professional who can guide and advise them through the process. An advantage of this is that they also liaise and work with the regulatory bodies and can communicate effectively with them on both general and detailed points. Some clients will be able to work with the regulatory bodies effectively but small companies or those who procure buildings infrequently, may encounter some difficulty. To lose this facility could cause confusion, misunderstanding and delay in the process.

There is however a positive side to greater involvement from owners. By having greater responsibilities, they are more likely to engage in the design and planning process, resulting in a greater appreciation of the work involved, providing they do not attempt to reduce the design quality on the grounds of cost savings.

6. Your members have experience of dealing with private sector verifiers across England and Wales. Can you outline any benefits or problems that the use of private sector verifiers has caused? Do you think the Bill takes account of any of the problems that have been encountered south of the border?

Information available indicates that there were difficulties with the AI system in England & Wales, however many of these were procedural and have been dealt with. The Bill allows Scotland to learn these lessons and provides sufficient flexibility to introduce processes that will lead to a better initial system of Verifiers.

7. Does the CIOB support the introduction of Approved Certifiers of Construction and Approved Certifiers of Design? If so, can you explain what benefits they will bring?

In principal yes. Such a system will allow greater flexibility of design, especially in areas of specialist design and construction, where genuine expertise and experience is limited. In these cases, the theory of both design and construction may be outwith the knowledge of the Verifier. Here, greater flexibility is needed. However, this also provides a greater risk in the adequate performance of the building. Procedures, similar to those employed for Verifiers, would need to be set in place to confirm the competence of Certifiers, both as individuals and corporate bodies. The levels of insurance carried by Certifiers must also be sufficient for the level of risk they are exposed to.

Certifiers should, if the vetting is clear and competent, allow faster passage of applications through the system by freeing up the Verifier from some of the more mundane elements, and working with them to develop the innovative and more complex designs.
8. The Bill allows local authorities to issue a ‘stop notice’ where a building is being constructed without a warrant or is non-compliant with a warrant. Does the CIOB support the introduction of such a power? Can you justify this answer?

The power of a stop notice is a valuable tool in the regulation kit, but should only be used as a last resort. Where building is progressing without the proper regulatory approvals, and the client/developer/builder is not working with the Verifier, this may be the only course of action. The fact that it exists may develop closer working arrangements and appreciation between Verifiers and the industry.