These documents relate to the Building (Scotland) Bill (SP Bill 65) as introduced in the Scottish Parliament on 18 September 2002

BUILDING (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Building (Scotland) Bill introduced in the Scottish Parliament on 18 September 2002:

   • Explanatory Notes;
   • a Financial Memorandum;
   • an Executive Statement on legislative competence; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 65–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The Bill sets out the framework for a new building standards (formerly building control) system in Scotland.

EC Construction Products Directive


6. The Directive as implemented in UK legislation by the 1991 Regulations requires that technical specifications set in the UK make use of harmonised standards issued by Europe. This means in Scotland that where building regulations cite a British Standard for a construction product or test method, it will have to be replaced by one or more European standards when they are produced. The provisions which make it easier for the Scottish Ministers to comply with these requirements are described below in relation to section 1.

Building standards system

7. The Bill replaces the Building (Scotland) Act 1959 (the 1959 Act), which deals in the main with the setting of building standards, compliance with and enforcement of those standards and powers in relation to dangerous buildings. The standards themselves are prescribed in regulations, supported by technical standards for compliance with these regulations.

THE BILL - AN OVERVIEW

8. The Bill retains the general framework of the 1959 Act though some of the procedures involved in the building standards process are changed to make them simpler and to reflect existing practice. The hierarchy of building regulations is amended to simplify compliance with European obligations as described below. Local authorities’ powers in relation to entry and inspection are altered with a view to making the identification of dangerous buildings easier. Provision is made for more information to be made available publicly on building warrant applications and completion certificates in relation to specific buildings. The Bill provides for
approved designers and approved persons or bodies involved in the construction process to certify that elements of a building do or will comply with building regulations. Ministers are given power to appoint bodies other than local authorities to undertake the role of verifying compliance with building regulations.

9. The Bill is in six parts:

- Part 1: Building regulations
- Part 2: Approval of construction work etc.
- Part 3: Compliance and enforcement
- Part 4: Defective and dangerous buildings
- Part 5: General
- Part 6: Supplementary

PART 1: BUILDING REGULATIONS

Section 1: Building regulations

10. Section 1 establishes the power of the Scottish Ministers to make building regulations. Subsection (1) sets out the broad purposes for which regulations may be made and also the matters for which the regulations may provide. Those purposes include, for example, accessibility and usability of buildings. Schedule 1 makes further provision about the matters for which building regulations may provide.

11. Section 1 makes it easier for the Scottish Ministers to meet their obligations under the EC Construction Products Directive in relation to recognition of harmonised European standards. Under the 1959 Act, the technical standards (the equivalent of guidance documents under section 4 of the Bill) which accompany building standards regulations also have mandatory force and this severely restricts the ability of Ministers to update regulations and technical standards as each new harmonised European standard is produced, within the timescales set out in the Directive. Under the Bill, it is only building regulations which have mandatory force and not the guidance which might accompany them (see sections 4 and 5). This will enable European standards to be specified in the guidance without having to go through the formal procedures of consultation and parliamentary process for each new European standard required under the 1959 Act.

12. Subsection (2) places a duty on Ministers to consult before making building regulations. They must consult the Building Standards Advisory Committee, which was established by the 1959 Act and the continuation of which is provided for by section 28 of the Bill. They must also consult other persons appearing to them to have an interest.

13. Subsection (4) gives Ministers the power by order to alter paragraph 5(2) of schedule 1, which lists particular matters for which building regulations may provide.
14. Subsection (5) gives Ministers the power to modify any enactment (whether in an Act or in subordinate legislation) which makes provisions which are inconsistent with a specific building regulation. Such enactments may also be modified if they become unnecessary or require alteration as a result of a building regulation.

15. The parliamentary procedures for building regulations and for orders under subsections (4) and (5) are set out in section 49.

Section 2: Continuing requirements

16. Subsections (1) and (2) give the Scottish Ministers the power to impose continuing requirements on building owners, so 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.

17. Subsection (3) makes it clear that a continuing requirement cannot apply to a particular building unless the building regulation which the requirement is designed to protect applies to the building.

18. Subsection (4) lists various matters in relation to which continuing requirements may be imposed by building regulations in relation to existing buildings, even where the relevant building regulations did not apply to them when they were built. Continuing requirements under subsection (4) may be imposed in relation to the services, fittings or equipment in or in connection with a building. Specifically, they may apply to the conditions of their use, their inspection or maintenance, or the making of reports to a specified authority (e.g. a local authority) on their condition. An example might be a requirement that a sprinkler system must be tested and maintained periodically.

Section 3: Relaxation of building regulations

19. This section allows the Scottish Ministers to dispense with or relax any provision of building regulations in relation to a particular building or description of building where they think that its application is unreasonable. For example the requirement to provide access for a fire engine might be waived on a remote island where there is no fire engine.

20. Subsection (2)(a) provides that Ministers may give a direction dispensing with or relaxing building regulations in relation to a particular building where any person makes an application to them. Applications are not restricted to owners, so, for example, a prospective buyer may apply for such a direction, though ultimate responsibility would remain with the owner. In this case, the direction applies only to the specific building. Subsection (5) provides that Ministers must send a copy of any such direction (or any direction varying or revoking such a direction) to the relevant local authority and to all verifiers authorised to exercise functions in relation to that building or other buildings of that description in the area of the relevant local authority.

21. Under subsection (2)(b), even if an application has not been made, Ministers may give a direction. In this case, the direction applies to a description of building. This is the equivalent to the provisions of the 1959 Act allowing Ministers to grant class relaxations, which deal with
products or building types which are suitable for general use but, for whatever reason, do not comply with the existing standards.

22. Before giving, varying or revoking a direction in relation to a description of building, Ministers must consult the Building Standards Advisory Committee and other interested persons, e.g. fire authorities (subsection (4)). Subsection (6) provides that Ministers must provide a copy of such directions to all local authorities and all verifiers.

23. Subsection (7) makes provision for the case where a direction ceases to have effect, or is varied or revoked, while an application for a building warrant is pending.

24. Subsection (8) provides that when dealing with a building or description of buildings in relation to which regulations have been relaxed under this section, references in legislation to regulations mean the relaxed regulations.

Section 4: Guidance documents for purposes of building regulations

25. Section 4 makes provision for the Scottish Ministers to issue, revise or withdraw guidance in relation to the requirements of building regulations. It also makes provision for the procedures to be followed in issuing, revising or withdrawing such documents.

Section 5: Compliance with guidance documents

26. As the documents referred to in section 4 have the status of guidance, they will not provide the sole means of meeting the requirements of building regulations. Subsections (1) and (2) clarify that failure to comply with guidance documents does not in itself render a person liable to civil or criminal proceedings, though proof of compliance with them may be relied on in any proceedings as evidence that building regulations have not been contravened. Subsection (3) provides that notices issuing, revising or withdrawing guidance are to be accepted as such during any legal proceedings unless the contrary is proved.

Section 6: Building standards assessments

27. This section places a duty on local authorities to carry out an assessment of a building’s conformity to building regulations when requested to do so by an owner. The owner of a building might, for example, request such an assessment at the request of someone intending to purchase the building.

PART 2: APPROVAL OF CONSTRUCTION WORK ETC.

Section 7: Verifiers and certifiers

28. Subsections (1) to (4) make provision for the Scottish Ministers to appoint verifiers, approved certifiers of design and approved certifiers of construction. Ministers must keep lists of these verifiers and certifiers and hold information on which functions they are allowed to carry out, including any restrictions imposed under paragraph 2 of schedule 2. The lists must be made available for public inspection at reasonable times.
29. Under subsection (5) Ministers may take over the role of a verifier where they deem it necessary. A verifier might, for example, request Ministers to take over its role in relation to verifying the compliance with building regulations of a unique building (e.g. an air traffic control centre) which it lacks the competence to verify. Ministers might also exercise the power where a verifier is not acting competently in relation to the verification of a particular project or series of projects.

30. Subsections (6) and (7) provide that Ministers may give verifiers directions as to their functions under the Act and that these directions may apply to all verifiers, particular verifiers or verifiers of a particular description. For example, a direction under subsection (6) might stipulate the frequency of site inspections required to fulfil the verification role or might require a particular verifier to pay particular attention to a specified aspect e.g. checking the maintenance of a Sustainable Urban Drainage Systems following a flood.

31. Schedule 2 makes further provision about verifiers and certifiers.

Section 8: Building warrants

32. Subsections (1) and (2) set out when a building warrant is required and make it an offence not to have one when it is required or to deviate from the work authorised by the warrant. Subsections (3) and (4) provide defences in criminal proceedings for such an offence. Where building work etc. is carried out without a building warrant and the owner gave a builder reasonable cause to believe that a warrant had been granted before the work commenced, the builder has a defence. Where work deviates from a warrant, the owner of the building has a defence where the owner did not know, and had no reasonable cause to know, that the work was been carried out otherwise than in accordance with the warrant. Subsection (5) provides that, if sufficient evidence is led to raise the question whether the accused has a defence under subsection (3) or (4), then the accused is taken to have established the defence unless the prosecution proves the contrary beyond reasonable doubt. Subsection (6) makes provision for building regulations to specify cases where building warrants are not required. Subsection (7) provides that a building warrant is granted in respect of the building work etc. to which it applies and not the person. Therefore where, for example, a building changes ownership after a building warrant is granted, the warrant is still valid.

Section 9: Building warrants: grant and amendments

33. Subsections (1) and (2) provide that verifiers must grant a building warrant or an amendment to a building warrant if, but only if, they are satisfied that the work will be carried out in accordance with building regulations and, when completed, will comply with the regulations. In the case of a conversion of part of a building the part being converted must comply with building regulations. Subsection (4) provides for building warrants to permit work on a building to be carried out in stages, each of which may require specific permission. This is the equivalent of the “staged warrant” system under the 1959 Act.

34. Subsections (5) and (6) make provision for a warrant to be amended by a verifier to permits deviations from the original plans etc.
35. **Subsection (7)** provides that where a non-local authority verifier grants a building warrant or an amendment to a building warrant, that verifier must send a copy of that warrant or amendment and any other necessary documents to the local authority for registration in the building standards register.

36. **Subsection (8)** provides that when an application for a building warrant or for an amendment to a building warrant is made, the building regulations which apply are those in force at the time of the application for the building warrant i.e. not any earlier version and, in the case of an application for an amendment to a warrant, not any later version incorporating changes made since the original application for the warrant.

37. **Subsection (9)** provides that the provisions in sections 9 and 10 do not prevent a local authority from refusing to grant a building warrant under provisions in any other enactment.

### Section 10: Building warrants: extension, alteration and conversion

38. This section sets out further grounds for refusal of an application for a building warrant or amendment to a building warrant where the application relates to the extension, alteration or conversion of a building. The first ground for refusal, specified in **subsection (2)**, is that a building which complied with building regulations at the time of the application will, in the verifier’s opinion, fail to comply with the regulations as a direct result of the extension, alteration or conversion. An example might be where an extension to be added to a hotel, would block the fire escapes i.e. the extension on its own might comply with building regulations but the hotel no longer would as a result of the extension.

39. The second ground, specified in **subsection (3)**, is that a building which failed to comply with building regulations at the time of the application will fail to comply to a **greater degree** as a direct result of the extension, alteration or conversion. An example might be a building which has an inadequate number of toilets and for which an extension, with no additional toilets, is proposed. The result of building the extension would be that the building would fail to meet the requirements for toilet provision to a greater degree than it did previously.

### Section 11: Building warrants: certification of design

40. This section enables a certificate from an approved certifier of design (appointed under section 7) to be submitted with an application for a building warrant or amendment to a building warrant. It provides that a verifier must accept the validity of the facts that are being certified by the certificate. Such a certificate might, for example, certify that an innovative design for the conservation of fuel and power or in relation to the usability and accessibility of a building for all potential users fulfils the requirements of building regulations.

### Section 12: Building warrants: reference to Ministers

41. This section makes provision for verifiers to refer matters to the Scottish Ministers where there is doubt as to whether proposals in a building warrant application comply with building regulations. The reference must be made with the agreement of the applicant. Ministers may express a view on the matter and verifiers must have regard to such views.
Section 13: Building warrants: further provisions

42. Subsection (1) imposes standard conditions to which every building warrant is subject. Under subsection (1)(a), the work etc. authorised by the warrant must be carried out in accordance the warrant and building regulations. Under subsection (1)(b), any conditions specified in any relevant direction under section 3 dispensing with or relaxing building regulations must be observed.

43. Subsection (2) provides that demolition works must be completed within the period stated in the building warrant.

44. Subsection (3) makes provision in relation to buildings intended to have a limited life. Under paragraph 3 of schedule 1, building regulations may make special provision for buildings intended to have a limited life. Subsection (3)(a) provides that building warrants for buildings with limited lives must state the intended lifespan of the building and that this intended lifespan must not exceed the limit specified in building regulations for that type of building. Under subsection (3)(b), the building must be demolished by the end of the period stated in the application.

45. Subsections (4) and (5) provide that owners may apply to extend the life of such a building if the application is made before the expiry of the period specified in the warrant. Further extensions may also be sought. The verifier may grant an extension if satisfied that is appropriate, taking any special provisions of building regulations into account. Subsection (6) provides, however, that any particular extension by a verifier of the period stated in the building warrant must not exceed that stated in any special provision of building regulations.

Section 14: Building warrants: late applications

46. This section provides for late applications for building warrants to be made. They can be made at any time where work for which a warrant is required has commenced, but before a completion certificate has been accepted. Under section 9(8), the version of building regulations which applies for the purposes of the late application is the version at the time of the application, not the version at the time the warrant should have been applied for. An application for a building warrant under this section does not affect any liability under section 8(2).

Section 15: Applications and grants: offences

47. This section creates offences in relation to applications for building warrants and in relation to verifiers granting or amending a warrant. In making applications, owners must not knowingly make false or misleading statements or make such statements recklessly. Verifiers must not grant warrants or amendments knowing that a statement contained in either of these is false.

Section 16: Completion certificates

48. This section makes provision for procedures to be followed by owners on completion of work or of a conversion for which a building warrant has been granted. Subsections (1) and (2) provide that the owner must submit a completion certificate certifying that any work or
conversion has been carried out in accordance with the building warrant. The certificate must also certify that following any work, conversion or provision of services, fittings or equipment, buildings comply with building regulations. In the case of a conversion of part of a building, it is the part which was converted which must comply with building regulations. Subsection (3) provides that it is the building regulations in force at the time of the building warrant application which apply, i.e. not any later version in force when the completion certificate is submitted.

49. Subsection (4) provides that, in relation to any work or conversion which is complete and has been carried out without a building warrant, the owner must still apply for a completion certificate. Subsection (5) provides that the certificate in such a case must certify that the work or conversion was carried out in accordance with building regulations and that the result complies with building regulations. Subsection (6) provides that in such a case it is the building regulations in force at the time the completion certificate is submitted which apply i.e. not those in force at the time the building work etc. was carried out, if different. The submission of a completion certificate under these provisions does not affect any liability incurred under section 8(2).

50. Subsection (7) provides that in relation to work carried out in implement of various notices under Parts 3 and 4 of the Bill, owners must submit completion certificates. The certificates must certify that work has been carried out in accordance with the requirements of the notice in question.

51. Subsection (8) provides that where a building warrant enforcement notice served under section 24 in relation to a building constructed without a building warrant requires the owner to submit a completion certificate, the certificate must certify that the building conforms to building regulations as they are in force when the completion certificate is submitted, i.e. not the version in force when the building was constructed.

Section 17: Completion certificates: acceptance and rejection

52. This section makes provision for the acceptance or rejection of completion certificates by a verifier. Subsection (2) requires a verifier to undertake reasonable inquiry before accepting a completion certificate. In particular cases, procedure regulations under section 30 may require a verifier to consult specified persons before accepting a certificate. Under subsection (4) a verifier other than the local authority must notify the authority that a completion certificate has been accepted.

Section 18: Certification of construction

53. Subsection (1) makes provision for an owner to submit to a verifier a certificate issued by an approved certifier of construction. This would certify that an element of construction, such as the plumbing or electrical work, complies with the appropriate building regulations. This certificate would be submitted with a completion certificate and under subsection (2) the verifier is obliged to accept facts certified in the certificate from the approved certifier of construction. Subsection (3) defines the terms “certificate” and “construction” as they apply in this section. The latter definition is broader than the general definition of “construction” in section 51(1).
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Section 19: Completion certificates: offences

54. This section creates offences in relation to persons submitting completion certificates and verifiers accepting completion certificates. In submitting a completion certificate, owners must not knowingly make false or misleading statements or make such statements recklessly. Verifiers must not grant a completion certificate knowing that a statement contained in it is false.

Section 20: Occupation or use without completion certificates

55. This section contains provision to prevent occupation or use of a building where a completion certificate is required in relation to construction or conversion of the building or work required by certain notices under Parts 3 and 4 of the Bill and no completion certificate has been accepted.

56. Subsections (3) and (4) make provision for a verifier to grant and extend permission for temporary occupation of such a building on application by the owner.

57. Subsections (5) and (6) create an offence of occupying or using a building in respect of which a completion certificate has not been accepted. The offence does not apply where there is a temporary permission under subsection (3) or to occupation of the building in connection with the construction, conversion or other work. The offence applies only to occupation or use where the person either knows that a completion certificate has not been accepted or pays no regard to whether one has been accepted.

58. Subsections (7) to (9) make provision for a local authority to seek, by interdict, to prevent occupation or use of such a building and for a court to grant such an interdict.

Section 21: Building standards registers

59. This section places a duty on local authorities to maintain registers for their areas with information about applications for building warrants, completion certificates and other matters required by regulations. Subsection (2) makes provision for regulations about the content of registers and the form and manner in which they are to be kept. Subsection (4) states that the register must be available for public inspection at all reasonable times.

PART 3: COMPLIANCE AND ENFORCEMENT

Section 22: Building regulations compliance

60. Subsection (2) makes provision for the Scottish Ministers to direct local authorities to secure that buildings of a particular description comply with a particular provision of the building regulations. They may issue such directions for the purposes set out in subsection (1) (which are the same as the purposes in section 1(1) in relation to the making of building regulations). To comply with a direction, local authorities may serve a building regulations compliance notice, and must do so if the direction so requires (subsection (3)). Except where a direction is mandatory, local authorities are free to decide how to comply with the direction. They could, for example, choose to encourage owners of the type of building in question to improve their buildings voluntarily, perhaps by offering financial incentive schemes.
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61. **Subsection (4)** provides that a building warrant is normally still required for work to comply with a building regulations compliance notice. **Subsection (5)** provides that where the local authority issuing such a notice is a verifier, the notice may require any relevant building warrant application or completion certificate to be submitted to that local authority, as opposed to any other verifier. **Subsection (6)** provides that a later date for complying with the notice may be substituted once a building warrant application has been made.

62. **Subsection (7)** creates an offence where the owner has not complied with the notice by the set date and in such cases allows local authorities to carry out the work specified in the notice and to recover the costs from the owner of carrying out that work.

63. **Subsection (8)** provides that a local authority does not have to apply for a building warrant where it is carrying out work to comply with a building regulations compliance notice because the owner has not done so by the set date. The authority must, however, register a completion certificate in the building standards register to certify that the necessary work has been carried out.

64. **Subsection (9)** makes provision for a local authority to withdraw or amend a building regulations compliance notice before or after it has taken effect. **Subsection (10)** provides that a local authority may issue a further such notice even if it has already withdrawn one.

**Section 23: Continuing requirement enforcement notices**

65. This section provides for a local authority to take enforcement action where an owner appears to be failing to comply with a continuing requirement imposed under section 2. The local authority may serve a continuing requirement enforcement notice as set out in **subsection (2)**.

66. **Subsection (3)** creates an offence where the owner has not complied with the notice by the set date and in such cases allows local authorities to carry out the work specified in the notice and to recover the costs from the owner of carrying out that work.

67. **Subsection (4)** makes provision for a local authority to withdraw or amend a continuing requirement enforcement notice before or after it has taken effect. **Subsection (5)** provides that a local authority may issue a further such notice even if it has already withdrawn one.

**Section 24: Building warrant enforcement notices**

68. This section makes provision for local authorities to take enforcement action where it appears to them that a building has been constructed without a warrant or not in accordance with a warrant or where a building with a limited lifespan has not been demolished by the due date (**subsection (1)**).

69. Under **subsection (2)** a local authority may, as appropriate, serve a notice requiring an owner to obtain a building warrant, obtain acceptance of a completion certificate, secure that a building conforms to a warrant or obtain an amendment to a warrant, or demolish the building. Such notices can be served only in the circumstances set out in **subsection (1)**. The obtaining of
a building warrant or an amendment to a building warrant, or the submission of a completion certificate, in compliance with the notice does not affect any liability incurred under section 8(2).

70. Subsection (3) provides that where the local authority issuing such a notice is a verifier, the notice may require any relevant building warrant application or completion certificate to be submitted to that local authority, as opposed to any other verifier.

71. Subsection (4) sets out the information which must or may be contained in such notices and the timescales within which the notices must take effect and be complied with. Subsection (5) makes allowance for the timescales for compliance to be altered if an application is made under section 3 for a direction dispensing with or relaxing building regulations.

72. Subsection (6) creates an offence where the owner has not complied with the notice by the set date and in such cases allows local authorities to carry out the work specified in the notice and to recover the costs from the owner of carrying out that work.

73. Subsection (7) provides that a local authority does not have to apply for a building warrant where it is carrying out work to comply with a building warrant enforcement notice because the owner has not done so by the set date. The authority must, however, register a completion certificate in the building standards register to certify that the necessary work has been carried out.

74. Subsection (8) makes provision for a local authority to withdraw or amend a building warrant enforcement notice before or after it has taken effect. Subsection (9) provides that a local authority may issue a further such notice even if it has already withdrawn one.

PART 4: DEFECTIVE AND DANGEROUS BUILDINGS

Section 25: Defective buildings

75. This section makes provision 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. This power replaces that in section 87(1) of the Civic Government (Scotland) Act 1982. It might be used, for example, in the case where a leaking roof risked damaging the structure of a building, to require the owner to make it resistant to moisture.

76. Under subsections (3) and (4) a local authority must specify in a defective building notice the dates by which works must be started and completed and may specify particular steps which the owner must take to comply with the notice.

77. Subsection (5) provides that a building warrant is normally still required for work to comply with a building regulations compliance notice. Subsection (6) provides that where the local authority issuing the notice is a verifier, the notice may require any relevant building warrant application or completion certificate to be submitted to that local authority, as opposed to any other verifier. Subsections (7) and (8) provide that the dates by which work to comply
with a notice must start and be completed may be amended when a building warrant application is made in respect of the work.

78. Subsections (9) and (10) create an offence where an owner has either not started or not completed work by the relevant specified dates and in such cases permits local authorities to carry out the required work and to recover expenses incurred by it from the owner.

79. Subsection (11) provides that a local authority does not have to apply for a building warrant where it is carrying out work to comply with a defective building notice because the owner has not failed to do so. The authority must, however, register a completion certificate in the building standards register to certify that the necessary work has been carried out.

80. Subsection (12) makes provision for a local authority to withdraw or amend a defective building notice before or after it has taken effect. Subsection (13) provides that a local authority may issue a further such notice even if it has already withdrawn one.

Section 26: Dangerous buildings

81. This section places duties on a local authority where it considers that a building presents a danger to people in or about that building, to the public generally, or to adjacent buildings or places. Under subsections (2) and (3) the authority must remove any occupants who are at risk from the dangerous building and adjacent buildings and must carry out work to prevent access to the dangerous building and adjacent places and to protect the public. Subsection (4) gives a local authority power, where it considers that urgent action is necessary to remove or reduce a danger, to carry out the necessary work, including demolition. In cases of urgency, the subsection recognises that it may not be possible to give prior notice to the owner.

82. Subsection (6) provides that a local authority does not require a building warrant for work carried out in relation to dangerous buildings under subsections (3) and (4). Subsection (7) makes provision for the removal of occupants of a dangerous building who may be endangered by work under those subsections. Schedule 3 makes provision about the evacuation of dangerous buildings and adjacent buildings.

83. Unless work carried out under subsection (4) removes the danger, the local authority must serve a dangerous building notice on the owner (subsection (8)).

Section 27: Dangerous buildings notices

84. Subsections (1) and (2) set out the purpose of a dangerous building notice and provide for the notice to specify dates by which work to comply with the notice must be start and completed. Subsection (4) creates an offence where an owner has either not started or not completed work by the specified dates and in such cases permits the local authority to carry out the required work and to recover expenses incurred by it from the owner. Subsection (5) provides that no building warrant is required for work to comply with a dangerous building notice and that any work which a local authority may carry out in order to comply with the notice does not require a building warrant.
85.  **Subsection (6)** makes provision for a local authority to withdraw or amend a dangerous building notice before or after it has taken effect. **Subsection (7)** provides that a local authority may issue a further such notice even if it has already withdrawn one.

**PART 5: GENERAL**

**Section 28: Building Standards Advisory Committee**

86. This section makes provision for the continuation of the Building Standards Advisory Committee, established under the 1959 Act. It sets out the purpose of the committee and places a duty on the Scottish Ministers to consult relevant interests before appointing members to it. It also makes provision for Ministers to make regulations with regards to specific aspects of the committee and for Ministers to pay members remuneration and allowances.

**Section 29: Exercise of local authority functions**

87. Under **subsections (1) to (3)** the Scottish Ministers may give directions to local authorities about their functions under the Bill. Under **subsections (4) and (5)** Ministers may, if they so direct, exercise local authority functions under Parts 3 and 4 of the Bill in place of that local authority. Ministers could, for example, use this provision to compel a local authority to repair one of its own buildings (e.g. the city chambers) where it refuses to do so.

**Section 30: Procedure regulations**

88. This section sets out the power of the Scottish Ministers to make regulations relating to procedures to be followed in connection with various matters under the Bill including applications, completion certificates, the issue of certificates by certifiers, functions of local authorities under Parts 3 and 4 of the Bill and the appointment, removal and exercise of functions of verifiers and certifiers. In addition to the general matters listed in **subsection (1)**, **subsection (2)** provides for the regulations to deal with the specific matters set out in schedule 4.

89. **Subsections (3) and (4)** make provision for the possibility of combining applications under the Bill and planning applications in a single application. This would allow for a joint building warrant and planning application.

**Section 31: Reports and information**

90. **Subsection (1)** places a duty on local authorities, verifiers and certifiers to provide the Scottish Ministers with reports or information on their functions under the Bill. Ministers might, for example, require information in relation to performance measures set by them.

91. **Subsection (2)** creates an offence where any local authority, verifier or certifier knowingly or recklessly provides information under subsection (1) which is false or misleading.
Section 32: Scheduled monuments, listed buildings etc.

92. Subsection (2) places a duty on local authorities to consult before serving notices under Parts 3 and 4 of the Bill on owners of the types of buildings listed in subsection (1) or carrying out work on a dangerous building of any of those types. For example, where a listed building presents a danger to the public, a local authority must consult the Scottish Ministers (which would ensure that Historic Scotland was consulted), the planning authority and any other body which they think fit, before the authority can serve a dangerous building notice on the owner. In the case of a dangerous building, consultation is required only if it is reasonably practicable. Subsection (4) provides that a requirement in a notice under Part 3 or 4 of the Bill to carry out work in relation to buildings listed in subsection (1) has effect only where it is consistent with the Acts specified in that subsection e.g. a notice served on a listed building must be consistent with the Planning (Listed Buildings and Conservation Area) (Scotland) Act 1997.

Section 33: Forms

93. This section makes provision for the Scottish Ministers to make regulations setting out the form and content of any document used under the Bill. Such regulations could, for example, provide that building warrants are to have the same appearance across Scotland and are to include the same information.

Section 34: Service of notices etc.

94. Subsection (1) applies the powers in relation to notices under the Local Government (Scotland) Act 1973 to notices etc. served under the Bill.

95. For the purpose of enabling any notice to be served, subsection (2) requires the persons specified in the subsection to provide information on those who have an interest in the relevant building. Subsection (3) creates an offence of refusing or failing to give this information or deliberately or recklessly making false or misleading statements in respect of it. Level 3 on the standard scale is currently £1,000.

Section 35: Fees and charges

96. This section enables Ministers to make regulations setting fees and charges in respect of functions performed under the Bill.

Section 36: Powers of entry, inspection and testing

97. This section gives the Scottish Ministers and local authorities powers to enter and inspect buildings and premises and carry out tests on materials in relation to certain functions under the Bill. Ministers’ powers in this regard are restricted to their function under section 3 of granting a direction dispensing with or relaxing a building regulation (subsections (1) and (2)). Local authorities may exercise these powers in relation to their powers in Parts 3 and 4 (subsections (3) and (4)).

98. Subsection (5) requires owners and occupiers of premises to provide the relevant authority with such assistance and information as may reasonably be required with regard to the
authority’s powers of entry, inspection and testing. Subsection (6) creates an offence of not complying with a requirement in subsection (5) and of intentionally obstructing a person exercising such powers. Level 3 on the standard scale is currently £1,000.

99. Schedule 5 makes further provision on the exercise of powers under this section.

Section 37: Work required by notice: owner’s right of entry

100. Subsections (1) and (2) establish the right of the owner of a building to enter the building or adjacent land for the purposes of complying with the notices specified in subsection (1). The owner must give the occupier reasonable notice first (subsection (3)). This section might apply where, for example, a landlord wishes to enter a flat which he or she owns for the purposes of carrying out repairs to comply with a defective building notice.

101. Subsection (4) makes clear that this right of entry prevails over any term to the contrary in any lease or contract. For example, under the terms of a lease, a tenant may be able to require a long period of notice for the landlord to gain entry to a premises. The right conferred by this section would override this.

Section 38: Tests of materials

102. Materials tests may be required to be carried out to establish the quality and strength of a material to confirm that it is suitable for compliance with building regulations. This section makes provision for verifiers and the Scottish Ministers to require specified persons to carry out a test of materials in specified circumstances. Ministers may require such tests to be carried out only after an application has been made to them under section 3 for a direction dispensing with or relaxing a building regulation. Verifiers may require such tests to be carried out by those who have applied for a building warrant under section 8, by those who have submitted a completion certificate under section 14 and by those who are constructing a building in pursuance of a building warrant.

Section 39: Expenses

103. This section deals with the liability of persons from whom a local authority has demanded payment of expenses in relation to work carried out by that local authority to secure compliance with notices under Parts 3 and 4. For example, where a dangerous building notice requires that a building be demolished and an owner has failed to carry out the demolition, the local authority may have to carry out the demolition itself and therefore claim the expenses it has incurred from the owner. Subsections (2) to (4) make provision for liability for expenses to be restricted or transferred.

Section 40: Compulsory purchase where owner cannot be found

104. This section provides for local authorities to compulsorily purchase a building and its site, where they have carried out work specified in subsection (1)(a) in relation to a dangerous building and have not been able to recover the cost of doing so because the owner cannot be found. The permission of the Scottish Ministers is required for the compulsory purchase
(subsection (2)). Subsection (3) provides for the procedure to be followed in relation to a compulsory purchase.

105. Subsection (4) provides that, where a compulsory purchase has been made under this section, the local authority may deduct from the compensation payable the outstanding expenses in relation to the work specified in this section carried out by it on a dangerous building.

Section 41: Sale of materials from demolished buildings

106. This section provides for local authorities to sell any materials from a demolition carried out by it where the owner has failed to comply with a building warrant enforcement notice under section 24 or the demolition of a dangerous building under the authority’s powers in section 26 and 27. The authority may offset any proceeds against other sums owed to the authority by the owner in respect of work under Parts 3 and 4 of the Bill.

Section 42: Appeals

107. Subsection (3) gives a right of appeal to the sheriff against the decisions and notices listed in subsection (1).

108. Subsection (2) allows procedure regulations to specify periods within which certain specified initial (i.e. pre-appeal) decisions should be made. Where such decisions are not taken within the specified period, the decision is to be treated, for the purposes of appeals only, as a refusal or rejection as appropriate. For example, if an owner applies for a warrant under section 8 and a verifier does not make a decision within the specified period on whether to grant one, then in order to allow the appeal procedure to start, the decision is to be taken as a refusal.

109. Subsection (4) provides that the effect of a decision or notice listed in subsection (1) is suspended until the period allowed for an appeal has elapsed or the appeal is withdrawn or finally determined.

110. Subsection (5) creates an exception to the general rule in subsection (4). Where a building warrant enforcement notice under section 24 requires construction work to be suspended, that requirement takes effect as soon as the notice is served and continues to have effect, unless quashed by an order of a sheriff, until the notice is complied with.

111. Subsection (7) provides that a sheriff’s decision on an appeal under this section is final.

Section 43: Penalties for offences

112. Subsection (2) sets out the penalties which apply to offences under the Bill, with the exception of the offences mentioned in subsection (1).

Section 44: Offences by bodies corporate etc.

113. This section makes special provision in relation to offences committed by bodies corporate, local authorities, partnerships and unincorporated associations (e.g. members’ clubs).
Specified responsible individuals within these bodies may be liable to prosecution and punishment in addition to the body in question. Level 5 on the standard scale is currently £5,000.

**Section 45: Criminal liability of trustees etc.**

114. This section creates a defence for certain individuals such as trustees or liquidators in proceedings for not complying with a building regulations compliance notice, a continuing requirement notice or a building warrant enforcement notice. The defence applies where the trustee, liquidator etc. has no other interest in a building and that person does not have sufficient funds in that capacity to incur the expense of complying with the notice. The defence would only apply where the person could prove the matters specified in paragraphs (a) and (b) of the section.

**Section 46: Civil liability**

115. This section provides for the liability of anyone who breaches duties under building regulations and by doing so causes damage, including the death, injury etc. of any person. Under *subsection (2)*, building regulations may create defences in any action for a breach of such duties. *Subsection (3)* provides for certain exemptions for buildings which exist before the section comes into force.

**Section 47: Inquiries**

116. This section makes provision for the holding of public inquiries for the purpose of any functions of the Scottish Ministers under the Bill and for the procedures applicable to inquiries under the Local Government (Scotland) Act 1973 to apply in any such inquiry.

**Section 48: Crown application**

117. *Subsection (1)* makes provision for the Bill to apply to the Crown (including Crown bodies). Subordinate legislation under the Bill, however, may or may not apply to the Crown (*subsection (2)*). *Subsection (3)* restricts the liability of the Crown. The Crown may not be held criminally liable, though the Court of Session may declare unlawful any act or omission of the Crown which contravenes any provision of the Act.

118. However, *subsection (4)* provides that persons in public service of the Crown (such as employees of Crown bodies) will be liable like other persons.

**Section 49: Orders and regulations**

119. This section sets out the procedures and scope of powers to make orders and regulations under the Bill.
Section 50: Meaning of “building”

120. This section defines the use of the term “building” in the Bill and how buildings may be classified for the purposes of the Bill and any orders and regulations made under it.

Section 51: Interpretation

121. This section defines terms used in the Bill. It also clarifies how a building which is in the area of two or more local authorities should be treated for the purposes of the Bill.

PART 6: SUPPLEMENTARY

Section 52: Ancillary provision

122. This section enables the Scottish Ministers by order to make incidental and other ancillary provision for the purposes of the Bill or in consequence of it. The power could, for example, be used to make consequential amendments to other legislation which are required because of the replacement of the 1959 Act by the Bill.

Section 53: Modification of enactments

123. This section refers to schedule 6, which makes amendments to other legislation as a result of the Bill.

Section 54: Commencement and short title

124. Under subsection (1) the provisions of the Bill, apart from those specified (which relate to powers to make orders), come into force on a date or dates appointed by the Scottish Ministers.

SCHEDULES

Schedule 1 (introduced by section 1): Building regulations

125. This schedule makes particular provisions in relation to the matters about which building regulations may make provision. Paragraph 1 provides that the schedule does not restrict the interpretation of the purposes of building regulations as set out in section 1(1).

126. Paragraph 2 enables building regulations to refer to a document published by or on behalf of the Scottish Ministers or some other person. An example might be where the regulations on the conservation of fuel and power include reference to an Executive policy document on the issue. It also enables specified persons to express their approval or satisfaction for the purpose of satisfying building regulations.

127. Paragraph 3 enables special provisions to be made for buildings with a limited lifespan. An example might be temporary classrooms.
128. Paragraph 4 enables building regulations to exempt from the requirements of the regulations, either completely or partly, particular types of building, works, services, fittings or equipment. Examples might be garden sheds, car ports or small porches.

129. Paragraph 5(1)(a) and (2) makes provision for various matters to be provided for in building regulations. As paragraph 1 states, however, this does not restrict the interpretation of the purposes of building regulations as stated in section 1(1).

130. Paragraph 5(1)(b) makes provision for building regulations to require that things are provided or done in connection with buildings and to make provision as to how those things are to be provided or done. An example of this might relate to providing for the maintenance of a sprinkler system and regulating the frequency of this maintenance.

131. Paragraph 5(1)(c) makes provision for building regulations to specify the manner in which work is to be carried out. Regulations might, for example, specify that workmanship must be of an adequate standard.

Schedule 2 (introduced by section 7): Verifiers and certifiers

132. Paragraphs 1 to 3 make provision in connection with the appointment and removal of verifiers and certifiers, and the terms of their appointment. Paragraph 4 places a duty on the Scottish Ministers to appoint a successor verifier where a verifier’s appointment has been terminated, and for successor verifier to take over the unfinished matters in relation to building warrants and completion certificates which the previous verifier had been dealing with. Paragraphs 5 to 9 make provision to avoid conflict of interest, either where a verifier is also a certifier or where a verifier has an interest in a building. Paragraph 10 defines what an "interest" means for the purposes of this schedule.

Schedule 3 (introduced by section 26): Evacuation of dangerous buildings and adjacent buildings

133. This schedule makes provision for the procedures to be followed for securing the removal from a building of those occupants of dangerous buildings and adjacent buildings listed in paragraph 1. Paragraphs 3 to 7 provide for the local authority to apply to the sheriff for a warrant for ejection and for the procedure to be followed. The sheriff’s decision is final. Paragraph 8 makes provision in relation to evidence presented by local authorities in an application under this schedule. Paragraphs 9 to 11 make provision, where a person removed or ejected from a building under this schedule (or section 26(2) or (7)) is a tenant of that building, for protecting their status and rights as a tenant.

Schedule 4 (introduced by section 30): Procedure regulations: particular matters

134. This schedule lists various matters which may be dealt with in procedure regulations under section 30. The schedule is not an exhaustive list of the matters for which procedure regulations may make provision.
Schedule 5 (introduced by section 36): Powers of entry, inspection and testing: further provision

135. The schedule makes further provision about the rights of entry, inspection and testing conferred on the Scottish Ministers and local authorities by section 36(1) and (3). Paragraph 1 provides that entry may be demanded only at a reasonable time, and after 3 days’ notice, unless the case is one of urgency.

136. Paragraph 2 makes provision in relation to the granting by a sheriff or justice of the peace to Ministers or a local authority of a warrant for the exercise of powers of entry, inspection and testing. To grant a warrant a sheriff or justice of the peace must be satisfied not only that there are reasonable grounds for entry etc. but also that at least one of the conditions in paragraph 2(2) is satisfied. Those conditions include refusal or expected refusal of entry, the premises being unoccupied or the owner absent, urgency and the case where applying for admission to the premises would defeat the object of the entry.

137. Where entry to premises has been refused or a refusal is expected, notice of the intention to apply for a warrant for entry must be given to the occupier of the premises unless the sheriff or justice is satisfied that giving such notice would defeat the object of the entry (paragraph 2(3)).

138. Paragraph 2(4) sets the period for which a warrant continues in force.

139. Paragraph 3 provides that anyone exercising a power of entry, inspection etc. must provide written evidence of the right to exercise that power if asked to do so.

140. Paragraph 4 provides for any person exercising a power of entry, inspection etc. to take other people or equipment onto the premises necessary, subject to the conditions of a warrant where one has been granted. An example might be where a person exercising a power of inspection takes a carpenter in order to lift the floorboards.

141. Paragraph 5 provides that any person exercising a power of entry, inspection etc. must leave the premises as effectively secured as they were before the power of entry, inspection etc. was exercised.

142. Paragraph 6 creates an offence where a person who enters a premises under section 36(1) or (3) makes use of or discloses information obtained by that person on those premises with regard to any manufacturing process or trade secret.

Schedule 6 (introduced by section 53): Modification of enactments

143. This schedule specifies the modifications which will be made to other legislation in consequence of the Bill.
FINANCIAL MEMORANDUM

INTRODUCTION

144. The purpose of the Bill is to introduce the new building standards system. This will result in the building regulations and building standards being produced in a revised format to meet the needs of the new system. The Bill will not result in a change to the content of the standards (in that they will initially be no more demanding than they are at present). The cost implications of any amendments to the regulations to improve standards will be assessed at the time that the relevant changes are made.

COSTS ON THE SCOTTISH EXECUTIVE

145. There will be a need for a slightly expanded central function to take on the greater coordinating role and the regulation of verifiers and certifiers. This will require a small number of additional staff. There will be start-up costs of up to £1.3m associated with establishing premises and recruitment of staff and associated costs and running costs of up to £1m would be required. It is intended that the monitoring of certifiers and verifiers and any verification work (e.g. of large projects passed from verifiers, or Crown buildings) should be covered by fee income.

COSTS ON LOCAL AUTHORITIES

146. The majority of local authorities’ work in building control is in relation to building warrants and associated work. This is covered by fee income. The Scottish Executive will shortly be undertaking research into the level of fees in building standards system with a view to ensuring that it satisfies the need to cover costs. Fees will be set to cover the costs of the verifier role undertaken by local authorities.

147. Local authorities also have an enforcement role which will continue in a similar way to that which exists already. The Bill will place only one additional duty on local authorities – to provide a building regulations assessment when requested to do so. This is similar to the existing practice of providing letters of comfort (explained in paragraph 45 of the Policy Memorandum) and will be covered by fee income. The Bill will give an additional power of entry to allow local authorities to check whether buildings are dangerous. This is an additional tool to assist in the enforcement role but does not incur costs.

148. The current system of relaxations whereby local authorities deal individually with applications for relaxation of standards in relation to individual buildings will cease to be necessary in the new system. The flexibility introduced to the system will allow these discussions to take place as part of the normal warrant process which will reduce the burden on local authorities and which will also fall within the fee’d work as part of the verification role. It will no longer fall outwith the fee’d element of local authorities’ work. There are currently over 3,000 relaxations per year in Scotland. Part of the advantage gained in savings here will be offset by the costs of the central function and it is likely that there will be corresponding movement of funds from the central funding available to local authorities.
COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

149. The means by which the Bill will ensure that the new building standards system meets the requirements of the Construction Products Directive is the introduction of a flexibility of approach which will allow owners, designers and builders greater freedom to select the method in which they demonstrate that they meet the requirements of building regulations and standards. There will continue to be guidance documents which are very similar to the existing technical standards. Meeting the requirements of this guidance will be evidence that the owner has met the requirements of the building regulations. It will therefore be possible for owners to continue to use a process which is very similar in form and content to that currently in place. It is expected that the large majority of cases will fall into this category and since the procedure will be much the same as at present, there will be no resultant increase in costs.

150. Additional cost to owners, who might be individuals or businesses, may be incurred if they are to seek to use the additional approaches made possible by the Bill. These will allow the owner to demonstrate compliance with building regulations without being bound by prescriptive lists produced by the Scottish Executive. Whether to use the new flexibility will be a choice to be made by owners and businesses. There will be no compulsion to adopt any approach which differs significantly from that contained within the current system. It would therefore be for an owner to decide at the outset whether the advantages in using the new option would be justified in terms of any comparatively greater cost than would have been incurred by following the traditional route.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

151. On 10 September 2002, the Minister for Social Justice (Ms Margaret Curran) made the following statement:

“In my view, the provisions of the Building (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

152. On 17 September 2002, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Building (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Building (Scotland) Bill (SP Bill 65) as introduced in the Scottish Parliament on 18 September 2002

BUILDING (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

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