Introduction
1. COSLA welcomes the opportunity to provide written evidence to the Finance Committee on the Financial Memorandum produced for the Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill (‘the DDB Bill’). COSLA will be sending comments on the policy aspect of the DDB Bill to the Local Government and Regeneration Committee in due course, so this response focuses on the financial issues.

Background
2. COSLA is the representative body for all 32 Councils in Scotland. Councils already have a statutory duty under the Buildings (Scotland) Act 2003 (‘the Act’) to deal with dangerous buildings within their local authority area in order to safeguard the public interest. Councils also have a discretionary power to deal with defective buildings.

3. The key issue in the DDB Bill for local authorities is in relation to the financial aspect of it. The DDB Bill would introduce charging orders into the Act that would permit Councils to recover the costs incurred following commissioning works to dangerous and/or defective buildings (under Sections 28, 29 or 30 of the Act) where the owner(s) cannot be found or where the owner(s) refuse or is/are unable to pay the costs.

General comments
4. Overall COSLA welcomes any additional means of recovering debt for local authorities performing their statutory duties. The Financial Memorandum highlights the additional costs for local authorities associated with the administration of charging orders. This cost is small in proportion to the cost associated with the actual remedial work on dangerous and defective buildings. The main issue for local authorities is therefore access to the funding to undertake the necessary work on dangerous and/or defective buildings. This is of particular concern with the likely increase in public expectation for a more pro-active approach to dangerous and defective buildings as a result of the DDB Bill. It is considered that the estimate of the number of charging orders within the Financial Memorandum does not take into account the likely increase in work carried out by the local authorities once a charging mechanism is put in place. The DDB Bill may improve cost recovery but will not address the issue of owners seeking to avoid costs or of not having the funds to carry out the works for themselves.

Specific comments
5. Although not provided for within the DDB Bill, it could be used to provide greater financial assistance to local authorities if they were ranked second to HMRC in terms of creditors, and if the provisions could be applied retrospectively in order to
recover outstanding debt. This would assist local authorities in experiencing the debt recovery process, giving Councils greater confidence to undertake works that go beyond the statutory function of dealing with dangerous buildings to those that are defective.

6. The Finance Committee may be aware that one urban Council currently has specific legislation that allows it to recover costs following work on dangerous and defective buildings. The experience of this one Council is that where Statutory Notices have been used then overall the Council has been reasonably good at collecting the monies due but that such Notices do not solve all the problems. For example, this Council is often challenged on the extent of the work carried out and so it is considered it might be useful to have guidance for Councils in assessing and justifying the level of work required.

7. As the works under the Act are not improvements to Council owned assets, then the Council is unable to borrow without applying for dispensation from the Scottish Government. Therefore Councils will need to fund such work from general revenue, which is only sustainable at low levels without the necessary funding requirement or the level of bad debt requiring cuts to Council services.

8. There is a risk that building owners may sell their property before the local authority can register the charging order, potentially resulting in the charging order not being enforceable against the new owner. Experience has shown that some owners will actively seek ways to avoid costs resulting from dangerous building interventions. An intermediate mechanism to register a “notice of potential liability for costs” should be considered, which does not require an amount to be specified at the point of registration (similar to that available under the Tenements (Scotland) Act 2004).

9. Care needs to be taken with the assumption of ‘savings’ as a result of the DDB Bill. Firstly, an improved cost recovery rate would reduce losses but would not achieve savings, and secondly, such an assumption about savings need to be tempered by the likelihood that the level of work (and therefore bad debt) will increase if a cost recovery mechanism is put in place. The level of estimated bad debt within the Financial Memorandum of £3.9m (paragraph 49) is also considered to be too low.

10. COSLA has concerns about the 30 year repayment period, with the view that this is too long and that it exacerbates the funding challenges that will be faced by Councils. There is concern over the delay between the Council’s expenditure and the potential 30 year repayment period given the large sums of money associated with some dangerous building interventions. The 30 year repayment period appears excessive for the following reasons:
   - It increases the risk of non-payment;
   - It ties up Council money that could otherwise be used on other services;
   - The administrative burden over such a long period; and
   - The 30 year period could potentially be longer than the asset life of the repair work.
11. Building owners are responsible for the upkeep and maintenance of their own properties. Problems usually occur when the property owner can't afford to undertake repairs or where there are multiple property owners and there is difficulty getting agreement to undertake repairs. As such it could be argued that there may be an equality issue whereby any enforcement action, particularly in relation to a building with shared ownership, affects those who are less well-off disproportionately.

Links to the Community Empowerment (Scotland) Bill

12. COSLA considers it is worth highlighting the provisions within Part 4 of the Community Empowerment (Scotland) Bill ("the CE Bill") which is currently out to consultation. These provisions appear to seek to deliver a similar outcome of providing an additional debt recovery mechanism in relation to the Act.

13. The draft provisions within the CE Bill appear to offer more flexibility for Councils both in that a) they are wider in scope, covering Sections 25, 26 and 27 of the Act (as well as Sections 28, 29 and 30 covered by the DDB Bill); and b) they are more flexible around repayment terms, in particular around the 30 year term stipulated in the DDB Bill. COSLA Leaders will be considering a report on the policy and financial issues associated with the DDB Bill at their meeting at the end of January. COSLA will also raise the issues in relation to the consultation for the CE Bill.