Summary of Written Submissions

1. The following questions were posed—

- Should verification of building standards be extended to organisations other than local authorities?
- Should procedural regulations specify a minimum requirement for the inspection of ongoing building works, to ensure compliance with building standards?
- Should there be a statutory system to provide redress for new home buyers whose properties are subsequently found not to meet building standards requirements?
- Are the current building warrant and associated fees set at the correct level?
- Any other issues relating to the regulations which you wish to bring to the attention of the Committee?

Extending the verification of building standards to other organisations

2. Almost 90% of respondents answered this question with half of respondents believing that the verification of building standards should be extended to other organisations. Just under 40% stated that verification should remain with local authorities.

3. Those in favour of extending the verification highlighted the delays in the current process and argued that by opening the verification of building standards to competition, delays would be reduced and service levels improved. The impartiality, accountability of local authorities and a consistent approach to the verification process across Scotland were among the reasons given to support the view that it should remain with local authorities.

4. Callum Bunce, who was in favour, argued—

“This would allow for applications to be dealt with by qualified Consultants, able to address applications on a more timeous turnaround without the constraints of an overburdened Local Authority which result in longer decision periods and repeat timescale cycles whenever observations require to be addressed. It would also deliver a more cost effective solution reducing the costs of Building Warrant applications and speeding up the delivery time. Having a private sector, replication of the English system, would help to reduce timescales and cost. It would also allow for greater interpretation of the regulations, as the English system, instead of the very rigid approach adopted by the Scottish System.”

5. The Scottish Property Federation believed that extending the verification scheme could provide flexibility and the ability to respond to increasing demands. It also
said that it would welcome the introduction of a regulatory body to oversee the verification process. It explained the reason for extending as—

After years of budget cuts, local authorities simply do not have the capacity to respond to the demand placed on their building standards departments, an issue that has been exacerbated by the loss of experienced staff members for various reasons.

6. Angus Council who were not in favour of extending verification to other organisations, highlighted local authorities’ engagement with the continuous improvement agenda—

Given the significant changes and improvements made by verifiers since 2005 it is the view of Angus Council that local authorities should be re-appointed as verifiers in May 2017. The period of appointment should be for the longest period possible.

7. South Ayrshire Council Building Standards, who were also not in favour, said—

Local authority verifiers are best placed to provide a locally delivered, independent, transparent, accountable and impartial service, with common aims and procedures.

8. Inverclyde Council and Aberdeen City Council, also argued against extending—

There is evidence that competition has reduced service standards in England and Wales. Local Authority Building Control in its submission to the All Party Parliamentary Group for Excellence in the Built Environment Inquiry into the quality and workmanship of new housing in England informed that 73% of the complaints received by local authorities over the 36 month survey period were about other organisations providing the building standards service.

9. Homes for Scotland, who supported extending verification to other organisations also referred to this report however and stated—

HFS is aware of the concerns raised around private sector verification within the APPG report into the Quality of New Build Homes in England. It should be understood that these concerns are explicitly related to new build homes in England and Wales, not Scotland where currently only local authorities can undertake the role of building standards verifiers. Whilst this is the case we are aware from our discussions with Scottish Government representatives that these concerns are not aimed at every private verifier in England. Nevertheless, we understand that these concerns can have an impact on the perception of new build homes in Scotland. We have therefore undertaken work with our members to help address many of the issues raised by the report.
10. NHBS Scotland, also in favour said—

Opening up the building control service to more providers would offer choice and competition in this sector which would combat these delays leading to service improvements that would increase the build rate of new homes in Scotland without compromising safety.

11. The Scottish Disability Equality Forum response, representing 8 members of the Forum, stated that all agreed that the verification process should be opened up to other organisations.

12. The Royal Town Planning Institute highlighted the financial pressures faced by local authorities and the need to make smarter use of resources with better use of technology and skills sharing. It warned against unintended consequences of extending verification to other organisations—

In this vein there have been discussions for some time about seeking to merge consents for various related pre-development procedures for which local government has responsibility. This would mean that only one consent need be obtained for, for example, planning permission, building regulations, and roads development. RTPI Scotland understands that Scottish Government is in ongoing conversations with relevant stakeholders, including Heads of Planning Scotland, about how this could be taken forward. Extending powers to verify building standards to bodies other than local authorities could have the unintended consequence of making it much harder, if not impossible, to make such a change to procedures. This could represent a missed opportunity to streamline how local government discharges its responsibilities.

Minimum requirement for the inspection of ongoing building works

13. Around 60% of respondents answered this question directly. Just over 30% believed regulations should specify a minimum inspection regime to ensure compliance with building standards whereas around 20% did not. A number of submissions said that setting a minimum requirement would improve services however would also increase costs. Inverclyde and Aberdeen City Councils did not agree with a minimum inspection requirement arguing that this would remove flexibility from the system. The Scottish Disability Equality Forum’s members all agreed that minimum standards should be set. The response summarised—

One respondent suggested this should be independent. Another suggested that building standards do not normally inspect new builds and their accessibility can be as bad as listed buildings. Another suggested there should be more than a minimum standard regarding ongoing works. One other respondent suggested that local authorities should have a legal duty to inspect on a regular agreed basis, all work which is being undertaken in their area. For example, site diaries should be completed daily. It should be compulsory to have a registered Clerk of Works on every major site, with legal responsibility to complete site diaries on a daily basis. Site diaries should be available on demand to Building Control.
14. Arup Fire, in favour of minimum standards, explained—

*From our first-hand experience on projects (both during construction and post completion) that this is absolutely essential for the successful delivery of safe buildings in Scotland. Construction standards we have seen can fall significantly below the level of detail required, where contractors are not aware of the importance of certain key aspects of the build.*

15. Victor Palombo, who was also in favour, said that standards appear stricter for private individuals building/converting their own properties than for large builders. With reference to large builders he said—

*This lighter touch process I understand is applied because of the deemed greater competence and quality standards of large builders. Recent experiences in both private developments and large public sector developments (e.g. schools) shows that this is clearly not the case. Larger builders are driven by time and cost targets, driving poor performance of their employees and sub-contractors resulting in poor quality construction all in an attempt to drive up profits. This loophole enables builders to cut quality to meet time and cost pressures and construct sub standards properties where ultimately the homeowner is left with little redress.*

16. Local Authority Building Standards Scotland did not believe that minimum standards should be set, stating that the national guidance already in place reduces non-compliance to an acceptable level. It pointed out that—

*The Verification During Construction guidance covers the minimum number of inspections and checks based on a risk based approach. Key Performance Outcome 2 (KPO 2) of the National Performance Framework relates and is reported quarterly to the Scottish Government by local authority verifiers and covers successful applicant notifications and inspections.*

17. The Royal Institution of Chartered Surveyors in Scotland believed that this would help address inconsistencies in inspections for on-going building works however it argued—

*“more detail and scrutiny on the application of procedural regulations will be required in advance of its introduction; this should include consideration of measures against developers who commence work without the verifier being informed.”*

**Statutory system to provide redress for new home buyers**

18. 50% of respondents answered this question directly with 15% of respondents believing that there should be a statutory system to provide redress for new home buyers and 35% did not agree.
19. Bern Balfe, an architect, supported such a system particularly for large scale new developments. Victor Palombo, who was also in favour of a statutory system of redress argued—

Warranties e.g. NHBC are restrictive and limited to damage only even where a property significantly does not meet NHBC’s own building industry standards. In effect what this means is that the individual can be left with a property which will never meet building industry standards with these deficiencies having to be disclosed on a home report. The individual has to suffer any potential loss of value in these circumstances with the builder and NHBC under no obligation to redress.

20. Those who were not in favour of a statutory system to provide redress referred to the current system of self-regulation and the Consumer Code for Homebuilders which applies to all new private home-buyer reservations and contains 19 requirements and principles which home builders must meet in their marketing and selling of homes and their after-sales customer service. In response to this, NHBC linked this to the previous question on extending verifiers and said—

By allowing NHBC to verify building standards in Scotland, home owners could benefit from added consumer protection through linked inspection and insurance and warranty cover and would therefore have a system of redress.

21. Homes for Scotland and others, referring to the Code said—

It provides an independent dispute resolution service for home buyers who believe their builder has failed to meet the requirements of the Code. This includes, amongst other items, the provision of information of the standards to which the home is being built (e.g. relevant building regulations, planning conditions and home warranty body technical requirements) during pre-reservation, reservation and pre-contract periods. The Code applies to complaints arising and made within two years of the date of legal completion of the first purchase and covers all home builders registered with the UK’s main new home warranty providers (NHBC, Premier Guarantee and LABC Warranty).

22. RICS told us that given there may be a need for redress, this must indicate problems with the current system whereby new houses can be built and sold while not meeting standards and consideration should be given as to why this is happening. It also told us—

If procedural regulations were introduced, in relation to inspection, this could alleviate some of the issues; but on a development site of 100 units, the Building Standards Surveyor will not have the opportunity to be on site to inspect all the houses. Moreover, Building Standards Surveyors only verify the certification provided by the owner or house builder as is required within the Building (Scotland) Act 2003. 20.
23. Unison Scotland and the City of Edinburgh Council both agreed that any system of redress should be designed to focus on the builders and contractors of the new houses. Elizabeth Gordon told us—

If Building regulations were more stringent and the level of inspection was increased before habitation certificates were issued there should be no need to provide redress. But as there will always be times when materials fail or mistakes are made a new statutory system should be looked at but it needs to have the power to look at the whole building and not a small isolated area.

24. Angus Council believed there was merit in a statutory system however it had major concerns with such a system and said that further research should be carried out before introducing any such scheme. It stated—

- Work should be carried out to determine whether house buyer’s issues relate to building regulations or workmanship.
- Insurance issues for local authority verifiers would have to be ascertained.
- Such a system could not be introduced without a more robust and mandatory regime being introduced in respect of site inspections.

**Building warrant and associated fees**

25. Just over 55% answered this question with 20% believing that the current building warrant and associated fee levels should not be changed and 35% stating that they are not at the correct level.

26. Most responses to this question referred to the current Scottish Government consultation on increasing building warrant and other associated fees to make the building standards system achieve full cost recovery. The NHBC Scotland was concerned that it was not clear as to whether the fee increase proposed would be linked to the delivery of a better higher quality service and said—

The fees for building warrants are not “ring fenced” against that service therefore the income is likely to be used to support activities across local authority budget expenditure rather than being used specifically to address resource and efficiency with the local Building Control department.

27. They go on to suggest—

The fee structure should be broken down and split between the two distinct operational processes carried out by local authority verifiers; i.e. the fee should be apportioned between the plan checking process and the number, type and quality of site inspections carried out. The latter inspections should be clearly linked to a risk management strategy and should be capable of being measured to determine the extent of meaningful support they provide in terms of identifying breaches to Building Standards.

28. RICS however, who were supportive of the fee increase, on the fact that they are not currently ring-fenced said—
RICS believes this approach needs amending. By guaranteeing budgetary resource, service provision across Scotland’s local Building Control departments should improve. Indeed, the proposed increase in fees, which are currently proposed to support local authorities, could equate to each local authority receiving an additional £62,500. Whilst this sum is not hugely significant, it could support the recruitment of trainee or assistant posts which could alleviate some of the pressures felt by some local authorities. This in turn could improve service delivery as well as negate the need for additional verifiers.

29. SELECT also agreed that the fees should be increased—

It seems clear that the Scottish Building Standards system should achieve full cost recovery, especially at a time when public budgets are facing real term reductions and when the Scottish public may start to question the use of public funds to support a system that many feel is only of benefit to developers. Achieving full cost recovery will allow the Scottish Building Standards system the ability to stand up to public scrutiny and show other public departments the way forward. A fully funded and resourced Scottish Building Standards system should also provide the resource necessary to ensure Certification schemes are promoted and used so they deliver the originally intended benefits.

30. The Scottish Property Federation had conditional support for a fee increase and called for the introduction of key performance indicators for building standards competencies—

In general, the SPF is not opposed to the increased fees or full cost recovery for local authorities, but this must be on the understanding that the building standards system will see substantial improvements after the higher fees are implemented. Our members feel that the proposed fees would not be value for money if the system maintained a ‘business as usual’ approach and did not use the extra injection of capital to improve response times and customer service.

31. A similar point was made by the Scottish Building Federation—

we are also strongly of the view that any increase in building warrant fees must be accompanied by a corresponding improvement in the standard of service provided – and would seek assurances that improved performance of planning and building control will be a quid pro quo of any increase in fees. At the same time, we have also urged the Scottish Government to consider a more wide-ranging performance review of building control, to include the publication of updated guidance designed to encourage greater consistency in decision-making.

32. Homes for Scotland and others did not believe that there was sufficient evidence to justify an increase in building warrant fees at this time and said—
The proposals put forward by the Scottish Government seek to incorporate the costs of Building Standards Division into the building warrant fee. The industry is not supportive of this proposal. As building warrant fees are a mechanism to support the verification service, they should not be used to fund the activities and responsibilities of the Scottish Government which should be drawn from general taxation.

33. Taylor Wimpey West Scotland also made the point—

We would suggest the fees currently being paid are more than enough to resource processing warrant applications, including site inspections. There is clear evidence on site of lack of resource, where very little in the way of site visits appear to be taking place by BC. In addition, where the applications being made are by volume builders (many of which are registered with NHBC), the technical information is either STAS approved already, or of sufficient detail to demand a reduced time in assessing / processing applications. Furthermore, from speaking with some local authority building control officers it would appear much of their time is taken up dealing with householder applications, therefore it’s this area alone which may need revisited in terms of fees.

34. Those who agreed that the fees should be reviewed highlighted the fact that the current levels were set in 2005. Local Authority Building Standards told us—

From the introduction of the current building warrant fees in 2005, local authority verification costs have risen significantly to cover the increased technical complexity of the Building Standards, the additional inspection workload as required by the New Verification Performance Framework and for example and most recently the investment made by local authorities and ongoing investment required to support the implementation of eBuilding Standards. The building warrant and associated fees should therefore be raised to cover the recognised increased costs of local authority verification from 2005 and to fully compensate for the fee income reduction in real terms.

35. Berne Balfe said that the fees were set too high for domestic work and stated—

There is also a significant amount of time involved in dealing with warrant submissions, the cost of which has to be passed onto the client and is largely a duplication of work which needs to be done anyway for preparation of appropriate construction information.

Other issues

36. Respondents raised a number of other issues including—

- difficulties in arranging meetings with Building Control officers;
- removing the options that allow misuse or abuse of disability regulations
- the need to increase the number of more accessible homes;
- the need for a more strategic, national approach to built-environment systems and the integration of planning and building standards;
• Personal experiences of the lack of redress when having bought a substandard new property;
• More training for architects on the interpretation and reasoning behind building regulations;
• More promotion of building standards as a career choice;
• The need for a more consistent approach to building standards across Scotland;
• Fire engineering alternatives as another means of compliance are not given the same consideration as technical standard compliance.