

**REPORT TO: DEVELOPMENT QUALITY COMMITTEE -**  
**REPORT ON: IMPROVING BUILDING STANDARDS - PROPOSALS**  
**REPORT BY: DIRECTOR OF PLANNING AND TRANSPORTATION**  
**REPORT NO: 320-2002**

## **1 PURPOSE OF REPORT**

1.1 To advise the Committee of the proposals for the future of the Building Standards system in Scotland.

## **2 RECOMMENDATIONS**

2.1 That the Committee notes the Report and agrees to advise the Scottish Executive that the council welcomes the proposals.

## **3 FINANCIAL IMPLICATIONS**

3.1 The Scottish Executive have stated that they believe that the financial impact on Local Authorities (resulting from the proposals) will be slight.

## **4 LOCAL AGENDA 21 IMPLICATIONS**

4.1 There are no Local Agenda 21 implications.

## **5 EQUAL OPPORTUNITIES IMPLICATIONS**

5.1 There are no equal opportunities implications.

## **6 BACKGROUND**

6.1 In July 2001 a consultation paper on the Scottish Executives proposals for the future of Building Standards in Scotland was published. There were 800 papers distributed to organisations and individuals with an interest in Building Standards.

6.2 The Scottish Executive received 126 responses from key players.

6.3 The proposals are contained within the March 2002 Improving Building Standards Consultation Paper and are all set out in the paper as they would appear in Primary Legislation. Copies of the paper are available in the Councillors' Lounges.

6.4 The purpose of the Building Standards is the protection of the public interest regarding health safety, welfare and convenience of people in and around buildings, the conservation of fuel and power, and the accessibility and usability of buildings by all people.

6.5 The purpose of the proposals is the reform of the current building standards (Building Control) to allow increased flexibility and to facilitate compliance with EU Construction Products Directive. This will be achieved by the introduction of a system based on expanded *functional standards*, back up by separately published *performance requirements and prescriptive specifications*.

6.6 The proposals set out below will replace the current system governed by the Building (Scotland) Act 1959. The following Chapters highlight the main areas of change. (A full description can be found in the March 2002 Consultation Paper).

### 6.7 Hierarchy

There will be a series of levels within the system. Functional standards will be the mandatory level. A functional standard is defined as the statement of a function that the building should fulfil in order to satisfy part of the public interest goal.

Subordinate to the functional standards will be performance requirements and prescriptive specifications. Neither of these will be mandatory. A performance requirement is a measurable level of performance. Meeting it would be sufficient, but not necessary, to satisfy, or partly satisfy, a functional standard. A prescriptive specification is a precise specification for a part of a building which, if complied with, will satisfy in part the functional standard.

### 6.8 Setting Standards

Scottish Ministers will have the power to set the minimum standards which will be called the Building Standards. They will be advised in this by a new executive agency, provisionally named the Scottish Building Standards Agency (SBSA). All new "building" and "building work" will be required to achieve the Building Standards. The Building Standards will be written in the form of expanded functional standards which will be sufficiently unconstrained to allow swift reaction changes in European requirements and in developments in construction design and delivery.

### 6.9 Duties and Responsibilities

The proposals identify the following people or organisation who will be involved in the process.

- 1 The *owner* will be responsible for complying with the requirements of the Act.
- 2 The *verifier* (Local Authorities) will be the enforcement authority.
- 3 *Approved certifiers of design* will be individuals and organisation competent in certifying the standard of design of a building or part of a building.
- 4 *Approved certifiers of installations* will be individuals or organisations competent in certifying the standard of installation of certain building elements.

### 6.10 Process

Before starting work the owner will be required to apply to the relevant verifier for a building warrant and receive it if the building or building works complies with the Building Standards. The onus will be on the owner to show compliance with the Building Standards.

### 6.11 Verification

Verification to ensure that standards are met will in the first instance be Local Authorities for their geographical area. However, Scottish Ministers will have the power to appoint other verifiers, to prescribe differences between verifiers and to limit a verifier to a particular region or to certain types of building. Verification would always be done by a third party. A Verifier must be impartial, competent and accountable and have access to enforcement powers. Verifiers should not have any other involvement in any part of the project for which they are the verifier.

The role of the verifier is to ensure the requirements of the building standards are met. It will be for the owner to decide which method of compliance with the standards they will use.

#### 6.12 Building Warrants

- 1 The Local Authority will be able to serve a stop notice where work has started without an application for a building warrant.
- 2 An owner will be able to apply for a building warrant at any stage even after the completion of works.
- 3 Retrospective applications will be treated as any other.
- 4 The Local Authority will have the power to initiate court action if a building is occupied before a completion certificate is accepted by the verifier.
- 5 Where a Local Authority finds fault or omission in a completion certificate which has been accepted. It will have the power to require the owner to take remedial action.
- 6 The verifier will have to consult the fire authority when verifying buildings which present particular hazards or are designed with new innovative fire emergency solutions. There will be a list of types of projects on which the fire authority should be consulted.

#### 6.13 Responsibilities of Local Authorities

- 1 The present intention is that each Local Authority will be the verifier for its own area, but there will be responsibilities given to Local Authorities which will rest with them regardless whether or not they are the verifier on a particular project.
- 2 Local Authorities will have the power to conduct surveys where they believe work has been done without a building warrant.
- 3 It will be an offence to obstruct a Local Authority from seeking to undertake a survey of unauthorised building works.
- 4 A Local Authority will be able to require an owner to apply retrospectively for a warrant and undertake any work necessary to meet the building standards.
- 5 Where an owner fails to undertake remedial work to satisfy the building standards the Local Authority will have discretionary power to undertake the work and recover the costs from the owner.
- 6 The Local Authority will have the duty to provide an assessment of compliance with the building standards and make a charge for such assessments. Scottish Minister will have the power to set the fees and to prescribe the form and content of the assessments.
- 7 The Local Authority will be able to serve a repairs notice on the owner or owners of a building which is in disrepair and where there is significant impact on public health or safety or its condition is likely to affect neighbouring properties significantly.
- 8 If a repairs notice is disregarded by an owner the Local Authority will have discretionary powers to undertake the necessary work and recover the costs from the owner.
- 9 If a building appears to pose an immediate risk to public safety the Local Authority will be able to take immediate action to prevent access and to undertake remedial works, or where necessary demolition themselves without first giving the owner or owners the opportunity to undertake necessary measures. The Local Authority will be able to recover the costs.
- 10 Local Authorities will have right of access to buildings to inspect them with a view to identifying buildings which may be dangerous. It will be an offence to obstruct a Local Authority seeking to make such an inspection.
- 11 If a building is Listed or in a Conservation Area the Local Authority must consult with Historic Scotland before taking action.

#### 6.14 Demolition Warrants

An owner must obtain a demolition warrant before demolition work is started and a certificate of completion at the end of the process. The warrant should stipulate the maximum time to be taken for the demolition work.

Before granting a demolition warrant the verifier should satisfy itself that any necessary planning permissions have been obtained and a health and safety method statement has been prepared.

Local Authorities will have the power to inspect sites and stop works where there is a risk to public safety.

If a building is Listed or in a Conservation Area, before taking action a Local Authority must consult with Historic Scotland as far as is possible within the available time.

#### 6.15 Building Standards Register

Each Local Authority must establish a Building Standards register to record all Building Warrants, accepted Completion Certificates and unaccepted Completions. Certificates in its area and other information specified by the SBSA (see para 6.18).

This information sought include details of unauthorised work or where there had been inconclusive action under a repair notice or a dangerous buildings notice.

The Building Standards Register must be made accessible to the public.

Ministers will have the power to prescribe fees and in what format and by what means the register is made available.

#### 6.16 Approved Certificate of Design and Installation

Elements of design and installation work either of a whole or part of a building should be able to be certified by individuals or organisations. The verifier should be satisfied that the individual or organisation has performed their role correctly and that the design meets the necessary standards. Approved Certifiers of Designs and Installations will be approved by Scottish Ministers (through the Scottish Building Standards Agency). They will also have the power to remove an individual or organisation from the list.

The verifier will have the power to challenge a Certificate where it believes the certifiers have not performed their role correctly and undertake inspections if required.

#### 6.17 Independent Advice to Ministers

It is envisaged that Ministers will continue to seek the independent advice of the Building Standards Advisory Committee which is a body established under the Building Scotland Act 1959.

#### 6.18 Function and Details of the National Agency

It is proposed to set up a National Agency which will be called the Scottish Building Standards Agency.

The SBSA will be responsible for:-

- 1 Writing the expanded functional standards and issuing or sanctioning other documents and guidance.
- 2 The guidance would be issued under the Authority of Scottish Ministers.
- 3 The SBSA will adjudicate disputes between Local Authorities and owners about the extent to which a building or design meets the building standards. Regulations will set out rules to establish issues to be referred to the SBSA.
- 4 The SBSA must consult with the Fire Authority in respect of adjudications.
- 5 The SBSA will have the power to grant relaxations of the Building Standards in exceptional individual cases.
- 6 The SBSA will contact the Fire Authorities in respect of advice given on relevant relaxations.

- 7 The SBSA will maintain a register of Approved Certifiers of Design and Installation and be responsible to audit and monitor their performance.
- 8 The SBSA will maintain a register of Approved Certifiers of Design and Installations.
- 9 The SBSA will have the duty to audit and monitor the competence of Local Authorities and verifiers in fulfilling their building standards functions.
- 10 The SBSA in discharging that duty may wish to set performance targets and criteria and negotiate service level agreements with Local Authorities and other relevant bodies.
- 11 The SBSA will be verifier with regard to Crown Buildings.

#### 6.19 Existing Buildings

Scottish Ministers will be able to require improvements to be made “to a level no higher than that required by the Building Standards” in an existing building or class of building where there is a clear public health and safety interest.

#### 6.20 Fees

Fees will be chargeable on all Building Standards work. Ministers will have the power to set fees and will be required to publish them.

#### 6.21 Transitional Arrangements

It is envisaged that the new system will become effective from 1 April 2005. At that point all new buildings and building work will need to satisfy the new requirements.

#### 6.22 Conclusions

The proposals are broadly in line with those outlined within the previous consultation document and will radically change the way Building Standards are delivered throughout Scotland. They are intended to simplify and streamline the procedures of Building Control and to clarify responsibilities. The onus for meeting the requirements of the Building Standards will clearly lie with the owner of the building but greater flexibility in how the standards are met will be provided. The Local Authorities will assume the role of verified of whether proposals meet the standards. They will be given additional powers and responsibilities in respect of unauthorised works. While this is not expected to result in any increase in cost to the Local Authorities or additional staff requirements, there may be a need to review the responsibilities, job descriptions and grades of Building Control Officers in the context of the new proposals and as a result of the recent amalgamation of the Institute of Building Control with the Royal Institute of Chartered Surveyors. This has resulted in a raising of the academic and skill standards expected of Building Control staff. A joint report with the Director of Personnel and Management Services on this aspect will be brought forward in due course.

**7 CONSULTATIONS**

7.1 The Chief Executive, Director of Finance, Director of Support Services, Director of Corporate Planning, and , have been consulted and are in agreement with the contents of this report.

**8 BACKGROUND PAPERS**

8.1 None

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