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East Ayrshire
COUNCIL

EM/SP

4 March 2011

David Stewart MSP
M1.05
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear David

CONSULTATION ON THE BUILDING REPAIRS (SCOTLAND) BILL

Thank you for your letter 20th December 2010 inviting comments regarding the consultation paper on the Building Repairs (Scotland) Bill.

The consultation proposals have been studied by both Building Standards and Legal Services to consider your proposals and offer practical commentary on the issues you raise. Consequently, I have attached the consultation questionnaire for your consideration.

Should you have any questions relating to this response please do not hesitate to contact David McDowall, Building Standards Manager on 01563 576749.

Yours sincerely

A handwritten signature in black ink that reads "Elizabeth Morton".

Elizabeth Morton
Depute Chief Executive/Executive Director of Neighbourhood Services

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has proven that debt recovery is extremely difficult, requiring legal action to be taken in the country where the owners are based. :

2. In your opinion, what changes should be made to current legislation to allow for a more effective system of identification and enforcement?

It is considered that, taken together, the provisions of Section 28 of the Building (Scotland) Act 2003, Sections 87, 99, 100 and 108 of the Civic Government (Scotland) Act 1982 and Sections 30(1), 35(1), 42(1), 43, 49(1), 59(1) and 172 of the Housing (Scotland) Act 2006 contain adequate provisions entitling local authorities to step in to carry out repair work where owners fail to do so, permitting them to recover the costs of the repair work from owners and putting in place charging orders (repayment charges in the case of the 2006 Act) against properties.

Dangerous buildings are generally dealt with in terms of Sections 29(1) and (2) and 30(3) and (4) of the Building (Scotland) Act 2003 under which local authorities have a duty to carry out work to rectify dangerous buildings either with or without notice to the owners and to recover the costs from the owners; in terms of Section 45 local authorities are entitled to promote a Compulsory Purchase Order for the acquisition of the sites of dangerous buildings where the owners cannot be found. There are however no provisions for charging orders or their equivalent.

Demolition of houses is dealt with in both the Housing (Scotland) Act 1987 and the Housing (Scotland) Act 2006. In the former Sections 115, 123, 131 and Schedule 9 make provision for demolition orders, the entitlement of local authorities to step in to carry out the work where owners fail to do so, permitting them to recover the costs of the work from owners and putting in place a charging order against properties. In the latter statute Sections 33(1), 35(1), 59(1) and 172 provide for demolition notices for houses in Housing Renewal Area, the entitlement of local authorities to step in to carry out the work where owners fail to do so, permitting them to recover the costs of works from owners and putting in place repayment charges against properties.

It is considered that there would be merit in amending the Building (Scotland) Act 2003 to provide for charging orders or repayment charges being recorded / registered against sites where there has been demolition and that the opportunity could be taken at the same time to introduce these for the cost of repair works.

7. What would be the benefits or disadvantages of changing the notice period in relation to defective building notices?

There does not appear any significant benefit to changing the notice period. Section 28 (12) of the Building (Scotland) Act 2003 already provides local authorities with the power to waive or relax any requirement of the notice or substitute a later date for any date specified for commencement or completion. Clearly the time required to carry out work will depend on the nature of the work and there may well be instances where a relatively short period of time would be required rather than the fairly lengthy period of 12 weeks suggested

8. Do you think this would allow adequate time for owners to carry out repairs to their properties and please give a reason for your response?

Existing legislation allows building owners adequate time to complete repair works as local authorities already have power to vary a notice period having regard to the nature, scale and complexity of the repair works involved to bring a building into a reasonable state of repair.

9. What do you see as the advantages or disadvantages of the proposal?

Proposal in relation to introduction of charging orders as a means of recovering reasonable costs and expenses incurred when dealing with dangerous buildings would be an advantage. Clarification would be required on the introduction of an appeal to an Ombudsman as their decision would not be legally binding. A building owner who did not accept the Ombudsman decision could still have a right of appeal to the Sheriff.

There is no advantage to increasing the notice period in relation to defective buildings. Clarification would be required for adding a third option to the appeal process, i.e., introduction of an internal panel. There could be potential conflict of interest for local authorities if the panel consists of council officers and the panel is dealing with appeals for notices issued on council building stock.

10. What do you see as the advantages and disadvantages of an automatic equal shares provision for local authorities in cost recovery for work carried out by them on dangerous and defective buildings?

owner present to undertake the minimum repairs or maintenance and would not comply with any certification scheme.

12. Do you have any comment on the financial implications of the proposals?

The only costs which local authorities require to incur are in relation to dangerous buildings. In that regard the financial implications would be the prospect of a better outcome for local authorities in recovering costs if charging orders or repayment charges were to be introduced by amendment to the Building (Scotland) Act 2003. If that Act was also amended to provide for charging orders or repayment charges for defective buildings it would allow local authorities to utilise the provisions of just one statute for both dangerous and defective buildings costs. Comment on financial implications has also been given in the response to Question 11.

The present system for recovering civil debt is not an effective means of cost recovery for local authorities, with many costs incurred when dealing with dangerous buildings regularly having to be written off. The proposal to introduce charging orders as an effective cost recovery regime would provide the necessary re-assurance to local authorities that costs incurred will eventually be recovered at a later date. This may result in local authorities taking a more pro-active approach with enforcement of defective buildings legislation in the knowledge that costs will be recovered from building owners. However, there may still be apprehension by local authorities in relation to enforcing such legislation as the initial cost outlay may be outweighed by the time period involved in recovering costs. This is particularly relevant at this time as budgetary cuts limit funds being diverted to this type of work in the future.

13. Do you have any comments on enforcement of the proposals?

There may be difficulties in enforcing the proposed system for certification of buildings. As commented on above the proposals would need to be expanded on in this respect as in others. It may be that enforcement procedures would need to be looked at to ensure that if, following inspection of buildings, owners fail to carry out repair or upgrading works deemed to be necessary to bring the building up to the required standard.

Further clarification / detail needs to be provided on how the proposed inspection and certification scheme would operate for local authorities to determine resources required to operate such a scheme. Details need to be provided on (1) who would be responsible for undertaking the inspections and providing 'certificates of building repair'? (2) what level of survey / inspection would be required before certifying that a building was 'not defective and in a good state of repair', i.e., full disruptive survey? (3) age of building before certification would be required and how long a