
Full list of consultation questions

1. What do you believe are the current problems with the enforcement of dangerous and defective buildings legislation?

The main blockages at present are

- The lack of resources, which in terms of staffing levels, means that we are not in a position to provide a service which is anything other than reactive.
- The time it takes to deal with such complaints particularly when dealing with tenemental properties with multiple ownership. Identifying owners is very time consuming and can be costly.
- The current legislation lacks robustness in terms of forcing people to undertake the necessary repair work.
- The funding of Local Authorities to pay for remedial work with no guarantee of this being reimbursed from owners.

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

- The current legislation should be clearer in terms of what is meant by a defect. The Building (Scotland) Act and the Scottish Building Standards Procedural Handbook define the term defective differently. The Act should be amended to clarify that a defect in this legislation is something significant which if not addressed may impinge on future safety of the building occupants or public in general.
- The current legislation under the Building (Scotland) Act 2003 states the Local Authority may undertake work in default and seek to recover all costs from owners, it does not allow the Local Authority to take on a part share of the work in conjunction with those owners who are willing to do the work. It would be beneficial if this legislation could be changed to make this an option.
- It would be beneficial if Data Protection Legislation was amended to permit information held by Council Tax on property ownership to be available to other sections of the Local Authority where this information is to be used for enforcement purposes. Failing that it would be useful to have some legislation that required some form of freely available public register of building ownership.
- It would be beneficial if the penalties for non compliance were more robust to include for instance fixed penalty notices.

3. What do you see as the benefits of charging orders in enabling local authorities to recover costs from owners of dangerous and defective buildings?

Introducing charging orders would give Local Authorities some comfort that any outlay will be recovered at some point.

4. What do you see as the disadvantages of charging orders?

The only disadvantage I can foresee is that there may be the impression that

introducing the power to use charging orders alone will lead to Local Authorities taking a pro-active approach to identifying defects/ danger. This measure alone will not make any real difference to the current reactive approach.

5. What do you see as the benefits of charging orders to owners of dangerous and defective buildings?

The benefit to the owner would be to allow those with no ready cash to in effect defer payment until either they sold the property or had funds to pay off the debt.

6. What do you see as the disadvantages of charging orders to owners of dangerous and defective buildings?

None

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

I can see no benefit in changing the legislation as it stands. As the report identifies, a defective buildings notice must include a start date which in terms of disrepair is a **minimum** of 7 days and completion date which is a minimum of a further period of 21 days. In other words the system has a great deal of flexibility as local authority can set realistic timescales which are proportionate to the level of risk or seriousness of the damage.

I consider that introducing a 12 week commencement period would be detrimental as it removes the flexibility that currently exists and would take account of the situation where more urgent action is required.

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?

From experience 12 weeks is most certainly not sufficient time to carry out repairs in all situations, but previously indicated, in some cases may be an excessive period. This is dependant on the extent of the damage or disrepair, hence the need for flexibility in setting the timescales.

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

Page 14 states the proposal is to increase the period for owners to commence repairs to 12 weeks. The summary in page 16 states the period of 12 weeks is or the work to be carried out. Accordingly it is not clear which of these is correct.

The legislative changes do not include any significant changes in terms of penalising those who fail to comply.

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?

The advantage to the local Authority is clear, avoids any time consuming investigation into title deeds etc. The main disadvantage is the potential arguments from owners, particularly in the case of buildings of mixed use i.e. where there are shops/ offices on ground floor of a tenement. There is also the problem where historically the number of flats has changed by either

subdivision of one large flat into two or more smaller units or conversely where there has been a conversion of two or more small units into one large flat.

11. What do you see as the advantages and disadvantages of a certification and inspection regime for buildings?

In principal the notion of a property MOT sounds like a good idea. Rather than being linked to a Local Authority Enforcement role, I would foresee this as being linked to a mandatory requirement for Buildings Insurance, similar to the situation with cars, so would not necessarily be an additional burden on the Council Tax payer.

There are a number of disadvantages to this system not least that would place an additional burden on property owners which might seem excessive i.e. this would be relevant to tenemental properties etc in city and town centres where there would be a greater risk to the public should a building fall into disrepair. There would also be a risk of opening the door to unscrupulous companies scaring people into unnecessary works (this has been documented in the case of factoring in the past.)

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

The general principle of allowing charging orders as a tool for recovery of costs is to be welcomed.

In order for action to be considered in a pro-active sense however, there will need to be additional funding to given to local Authorities to give a pot of money to work with which should then be self financing.

In addition, I am quite confident that in these difficult economic times when staff levels are being cut to save money, the majority of Scottish Councils will not have the staffing resources to contemplate pro-actively tackling the problems of disrepair, unless additional money is found for this purpose.

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

It would appear there are a number of pieces of legislation which seek to address the same problem and it may be useful to consolidate these into one for ease of understanding and clarity. I do agree that the enforcement – but not necessarily any certification scheme, should remain as a Local Authority function.

14. Are there any equality issues that arise from these proposals?

There are perhaps issues surrounding those on low income, those with disability or those who are elderly.

General Comments

Having discussed this with colleagues involved in our Conservation Team, there is surprise expressed that in referencing current legislation, no mention is made of the relationship with the 1997 Planning Listed Buildings and Conservation Areas Scotland Act in respect of urgent works / repairs notices or new provision in the Heritage Amendment Bill which includes for charging orders. This is important because it allows for CPO for benevolent purchasers and full reinstatement of all required repairs

including all architectural detail. Grant assistance. Whilst statutory repair grants may now be a thing of the past there is still potential for assistance via other sources is Historic Scotland or Heritage Lottery

There needs to be more consideration to removing ownership obstacles and positively encouraging activity through partnership working with willing developers and other agencies.

We are of the view that more needs to be done upfront with building owners to ensure buildings are maintained with recourse to enforcement action being reduced to a backstop measure where all else fails or where public safety is at risk.