

The Building Repairs (Scotland) Bill Consultation

Response from David Kingham, Director on behalf of Hacking and Paterson Management Services

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

We agree with the comments in your consultation paper to the extent that the lack of available funding, the cost and administration of endeavouring to recover what was spent and the likelihood of building up irrecoverable debt will presently act as a disincentive to local authorities considering the issuing of defective building notices.

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

Firstly, dealing with identification, there appears no formal procedure in place at present whereby defective buildings would be identified as requiring to be dealt with under a Defective Building Notice. We believe that most instances are brought to the local authorities attention by frustrated homeowners wanting to instruct necessary work but unable to do so without the cooperation of other proprietors within the property. For such instances the Housing (Scotland) Act 2006 does outline a mechanism under part 1, chapter 6 which can and does assist.

Setting aside the obvious financial concerns and considerations which would accompany it, legislation which required all properties to undergo some form of periodic "health check", linked to an obligation to act on deficiencies with penalties for not meeting the set standard, would be groundbreaking but it is our belief that radical action will need to be taken along such lines if the long term situation is ever to improve.

We do not believe that there is presently any problem with the enforcement of the present system should any local authority be financially able to do so.

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?

Our experience of the Notice of Potential Liability for Costs (see Title Conditions (Scotland) Act 2003 & Tenements (Scotland) Act 2004) in particular is that it is a very useful tool in recovering long outstanding debts, at the time when the property is eventually sold. We therefore believe that it would benefit local authorities in their longer-term debt recovery process to adopt this process where this is not already the case.

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

The only disadvantage that we would envisage in using this method would be if it was used independent of legal action rather than as a last resort. Having such a burden placed on the Title of the property does not in anyway expedite the sale of the property and we would suggest that it would still be necessary to pursue the usual means of debt recovery if there was to be any prospect of the debt being recovered in the short term.

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

One of the statistics within your consultation paper was that only six out of thirty two local authorities have issued a Defective Building Notice since the Building (Scotland) Act 2003 came into force which is a very telling statistic. The use of "charging orders" in aiding the cost recovery process of local authorities would probably require to be tried and tested initially before there would be any change in the local authorities approach to the issuing and enforcement of a Defective Building Notice. Thereby any direct benefit to proprietors would rely solely on this tool being the catalyst for an attitude change among the local authorities.

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

We see no disadvantage to the proprietors of such properties.

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

This probably depends entirely on the circumstances under which the Defective Building Notice was issued. If, as referred to previously, owners themselves had approached the local authority requesting that they act because they did not have the support of all proprietors, you could argue that this would disadvantage proprietors hoping to have the defect attended to quickly. Bearing in mind that many of the building defects that are probably being dealt with here tend to have an impact on the minority of proprietors i.e. a top floor flat or flats being affected by water ingress, it is likely that such owners will see a longer notice period as being a distinct disadvantage.

If owners are being made aware of the defect for the first time then it is certainly in their interest that the notice period is sufficient and reasonable to enable them to fund and put together a scheme, ideally administered through their factor, to deal with the problem without the need for local authority intervention.

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

Taking our comments on question 7 above into account, three months should be plenty of time for a group of willing owners to obtain competitive estimates, make available funding and undertake necessary repairs, particularly when administered through a factor.

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

For there to be any real advantage to the proposal would require a primary change in the attitude and approach of the local authorities which in turn would rely on their experience following any change in legislation.

We see no distinct disadvantage but do have a concern that there will be little or no improvement overall in the current regime for the reasons outlined overall.

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?

While this may simplify matters for local authorities seeking to recover costs the share differentials that presently exist, particularly in the West of Scotland, can be so great that this could cause more problems than it would solve. In particular those proprietors presently burdened with the lions share of repair costs would potentially be "encouraged" by such legislation to avoid repair schemes administered through the factor, or in conjunction with their fellow proprietors, in the knowledge that they will be required to pay far less if and when the local authority steps in to undertake the necessary work. We appreciate that the other proprietors, at that point, could still take action against such an owner to recover the sums paid but this will hugely disadvantage such owners and we would suspect that the proprietors with the larger shares would be willing to take such a risk nonetheless.

We suspect that local authorities will also meet opposition from proprietors who, under the normal scheme of things, should have been due much less in terms of their Deed of Conditions.

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

As alluded to in our answer to question 2., a robust inspection and certification regime could be groundbreaking and if properly financed could be a huge step towards tackling defective and dangerous buildings at the very root of the problem.

The obvious disadvantages would be the financial and administrative implications and the potential for greatly increasing, in the short term, the current backlog of defective buildings requiring attention.

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

We have nothing to add to what we have referred to above.

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

We have nothing to add to what we have referred to above.

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

We are not aware of any equality issues that arise from these proposals.