



# Consultation on the proposed Building Repairs (Scotland) Bill

11 March 2011

# About Consumer Focus Scotland

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Consumer Focus Scotland is the independent consumer champion for Scotland. We are rooted in over 30 years of work promoting the interests of consumers, particularly those who experience disadvantage in society.

Part of Consumer Focus, our structure reflects the devolved nature of the UK. Consumer Focus Scotland works on issues that affect consumers in Scotland, while at the same time feeding into and drawing on work done at a GB, UK and European level.

We work to secure a fair deal for consumers in different aspects of their lives by promoting fairer markets, greater value for money, improved customer service and more responsive public services. We represent consumers of all kinds: tenants, householders, patients, parents, energy users, solicitors' clients, postal service users or shoppers.

We aim to influence change and shape policy to reflect the needs of consumers. We do this in an informed way based on the evidence we gather through research and our unique knowledge of consumer issues.

## Introduction

Consumer Focus Scotland is pleased to be able to respond to the consultation on the Building Repairs (Scotland) Bill proposed by David Stewart MSP. Consumer Focus Scotland, and its predecessor organisation, the Scottish Consumer Council, have had a long history of working on housing policy issues. Through this work we have helped to achieve a number of positive outcomes for consumers in the owner-occupier, social rented, and private rented sectors.

The quality of the housing that we live in has a major impact on every other aspect of our lives, including the extent to which we might need and use other services – for example health and social care services, financial services, legal services, and energy supplies. Buying or renting a home is also likely to be one of the most expensive and significant transactions that most of us will ever enter into. For these reasons, it is essential that consumers' rights and interests in relation to housing are properly promoted and protected.

We produce the consumer guide *Common Repair, Common Sense* to increase homeowners awareness of their rights and responsibilities<sup>1</sup>. This popular guide, currently in its second edition, has been distributed to over 100,000 individuals.

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

The level of disrepair of Scotland's housing is well documented. The most recent Scottish House Conditions Survey found that almost eighty percent (78%) of dwellings in Scotland have some disrepair. In just under half of dwellings (44%) with some form of disrepair, that disrepair is urgent. An urgent disrepair repair is one which, if not carried out, would cause the fabric of the building to deteriorate further and/or place the health and safety of the occupier at risk<sup>2</sup>.

Consumer Focus Scotland believes that it is the owners' responsibility to repair and maintain their properties. Where they are not willing or able to do so, local authorities should have a clear procedure in place for carrying out work and charging owners.

However, we are not convinced that there is a gap requiring further legislation. In relation to residential houses, local authorities have existing powers under the Housing (Scotland) Act 2006. These powers include serving a work notice against owners to ensure that they carry out work to bring any house which the local authority considers to be sub-standard into, or keeping it in, a reasonable state of repair. Where work is not carried out as specified, the council can do the work itself and reclaim the cost from the owner. They can also serve a maintenance order where an owner has not maintained, or is unlikely to maintain, their property to a reasonable standard. Local authorities have powers under the Housing (Scotland) Act 2006 to enforce the maintenance plan and recover costs from owners.

In order to recover its costs, the council can issue a repayment charge, which is registered against the title of the property concerned. Annual installments, including interest, are required to be paid and the charge can be seen by anyone buying the property in the future, who would normally ask that the charge be repaid before the

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<sup>1</sup> <http://www.consumerfocus.org.uk/scotland/publications/consumerguides>

<sup>2</sup> Scottish Government (2010) *Scottish House Conditions Survey: Key findings for 2009*  
<http://www.scotland.gov.uk/Publications/2010/11/23125350/0>

purchase. There has been no evaluation of the effectiveness of the Housing (Scotland) Act 2006, in relation to work and maintenance orders.

### **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?**

We support the view taken in the consultation paper that there is confusion about the powers that local authorities have under their disposal, and would welcome greater clarity in this for both residential and non-residential owners.

This is a complicated area, with overlap between a number of different pieces of legislation. As noted above, local authorities have powers under the Housing (Scotland) Act 2006 to issue a repayment charge against owners for work carried out to residential properties. We would welcome an evaluation of this mechanism prior to any additional legislation on the issue.

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

### **8. Do you think this would allow adequate time for owners to carry out repairs to their properties?**

We are unclear of the relationship between defective building notices and work and maintenance orders under the Housing (Scotland) Act 2006. The Housing (Scotland) Act 2006 does not stipulate a uniform timetable for carrying out the work required, as it recognises that this will depend on the nature of the work itself. Our preference is for this flexible approach, to allow local authorities to set timetables that suit individual situations, rather than a 'one size fits all' approach.

### **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?**

In tenement properties, individual title deeds currently outline the apportionment of costs for work carried out. Where there are gaps or these are silent, the Tenement Management Scheme applies, and all owners share equally in the costs of maintenance and repair. There are two exceptions to this rule, firstly where the work involves maintenance that does not serve the whole tenement (in which case it is shared equally between those who benefit from the area) and secondly, where the floor area of the largest flat is more than one-and-a-half times that of the smallest flat (in which case costs are shared proportionately).

While there has been no evaluation of the equal shares element of the Tenement Management Scheme, we are not aware of evidence that suggests further legislation is required.

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

The general aim of this proposal is to improve the quality of buildings in Scotland and Consumer Focus Scotland supports that aim. However, we do not believe that a certification and inspection regime is a proportionate solution to the difficulties faced. The proposals would require significant investment in local authority housing departments to ensure certificates were received and inspections carried out.

We have been strong advocates for the Home Report. This is a pack of three documents: a Single Survey, an Energy Report and a Property Questionnaire. The Single Survey contains an assessment by a surveyor of the condition of the home, a valuation and an accessibility audit for people with particular needs. All sellers who have placed their house on the market from 1 December 2008 onwards must have a Home Report and provide, upon request, a copy to prospective buyers. In 2009, around 5% of owner-occupied properties had a home report carried out<sup>3</sup>. On this basis, it will take around 20 years for the majority of properties in Scotland to have a survey of the condition of their home. While we appreciate that the Home Report will take some time to improve the quality of Scottish housing, we do believe that this mechanism will improve awareness of disrepair and encourage owners to repair and maintain their properties.

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<sup>3</sup> Scottish Government (2010) *Interim Review of the Home Report*  
<http://www.scotland.gov.uk/Publications/2010/09/28094548/0>