

Keeping Scotland Safe - The Building Repairs (Scotland) Bill Consultation

Fife Council Consultation Response

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Fife Council welcomes the opportunity to respond to the consultation.

Question 1

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

Dangerous Buildings:

The current legislation, Sections 29&30 of the Building (Scotland) Act 2003 imposes a statutory duty to act on Local Authorities to remove danger and is effective in providing the necessary powers for a Local Authority to respond to dangerous buildings in the interests of public safety either by urgent immediate action or by via the service of a notice as appropriate.

The difficulties occur at the cost recovery stage around identification of owners, shares of costs, recovery of expenditure by civil means and the subsequent cross Service resources required to carry out this process (often without success).

Defective Buildings:

Sections 28 of the Building (Scotland) Act 2003 provides discretionary powers for a Local Authority to act.

This legislation has not been used to date in Fife as cross Service working in particular under the Housing Acts can address defective (disrepair) issues in housing/associated non-domestic premises.

For other non domestic buildings, beyond routine monitoring, formal intervention is typically when a building is over time subsequently considered dangerous.

The difficulties in cost recovery, use/potential loss of public money to support private owners and the staffing resources required being the main obstacles.

Question 2

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

There are various pieces of overlapping legislation applicable to either all building types or focussed on dwellings and these should be rationalised.

However the main issues regarding dangerous and defective buildings legislation under the Building (Scotland) Act 2003 are essentially:

- availability of resources (financial and staff),
- the discretionary aspect of the application of defective buildings legislation (optional for Local Authorities to fund/resource)
- cumbersome and uncertain cost recovery process

Fife Council supports the introduction of Charging Orders into the Building (Scotland) Act 2003 to allow for increased efficiency/certainty of cost recovery

Question 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?

From a Local Authority perspective, Charging Orders would add a greater degree of certainty to the cost recovery process and potentially reduce resources required around cost recovery/legal action.

With regards to owners, the potential of a burden being placed against their title may encourage the necessary repairs to be carried out prior to Local Authority intervention.

All these factors contributing to the increased likelihood of defective buildings legislation being utilised to the benefit of public safety.

Question 4

What do you see as the disadvantages of Charging Orders?

Delay between the making of a Charging Order and the recovery of costs (Local Authorities would require to fund this gap). Potential that the costs of works carried out could exceed the residual value of the property.

Under the present financial climate, even with the benefit of Charging Orders Local Authorities may still be reluctant to engage in such areas of discretionary work/activity.

Question 5

What do you see as the benefits of Charging Orders to owners of dangerous and defective buildings?

Would allow owners flexibility in agreeing the repayment mechanism/period with the backstop of repayment at the time of sale and provide clear linkages of burden to the title.

Question 6

What do you see as the disadvantages of Charging Orders to owners of dangerous and defective buildings?

The burden on property/site would be apparent at the time of any potential sale and could cause difficulties/reduction in value.

Question 7

What would be the benefits or disadvantages of changing the notice period in relation to Defective Buildings Notices?

Current legislation is flexible, enabling Local Authorities to tailor the notice to the size/nature of the required works.

Introducing a 12 week period to start works could contribute to a defect translating into an immediate danger, particularly if owners are reluctant to accept responsibility or unable to agree a way forward to carry out the necessary work.

Question 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?

Opportunity for procurement/tendering (large value works), reaching agreement between multiple owners and the scale of the works all determine the appropriate timescale.

Existing flexibility in the legislation can accommodate all these factors.

Question 9

What do you see at the advantages or disadvantages of the proposal?

Many of the advantages/disadvantages have been discussed as above.

In addition to these points:

In many cases to protect public safety swift and decisive action is required. Providing additional complexity/layers to any appeal process particularly against dangerous buildings actions could potentially result in additional delay and public risk.

In the case of demolition the residual value of the cleared site may not cover the costs of the demolition works.

Question 10

What do you see as the advantages and disadvantages of an automatic equal shares provision for Local Authorities in costs recovery for work carried out by them on dangerous and defective buildings?

Main advantages would be reductions in the legal/administrative process re obtaining title deeds/determining liability - which can be a significant stalling point within the current cost recovery process.

In terms of fairness this should perhaps be the solution to delays or where apportionment is not clear within the deeds.

Tenements (Scotland) Act 2004 may influence.

Question 11

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

Advantages: Would potentially force building owners to consider and accept responsibility for the condition of their buildings. If successful, resultant reduction in the number of dangerous/defective buildings and improvements in built environment.

The Housing (Scotland) Act 2006 seeks in part via the “Scheme of Assistance” to encourage and support homeowners to maintain their properties.

Disadvantages: Burden of administering the scheme (public or private), related to the scale of the national disrepair problem.

Question 12

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

The introduction of Charging Orders would significantly improve the potential for Local Authorities to recover costs resulting from dangerous and defective buildings activity.

This should ease budget pressures on the statutory dangerous buildings actions and reduce concerns around taking discretionary defective buildings action.

The current civil debt collection process is not sufficient.

Question 13

Do you have any comments on enforcement of the proposals?

Local Authorities are best placed to enforce the proposals.

Enforcement workload relating to the discretionary activity will be a resource balancing/prioritisation issue for Local Authorities.

Introducing additional appeal routes/mechanisms into the existing legislative processes is not thought helpful and could complicate/delay the enforcement and resolution of public safety issues.

Enforcement of the certification scheme by Local Authorities would be a significant resource burden.

Question 14

Are there any quality issues that arise from these proposals?

None identified