

The Building Repair (Scotland) Bill Consultation

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

East Lothian Council Housing Strategy and Development consider the financial implications of enforcing dangerous and defective building notices without being about to secure recovery of the debt make the legislation an unattractive option for local authorities. The fact that 'housing' legislation (under the Housing (Scotland) Act 2006) allows for the recovery of costs associated with enforcement of Work Notices means that there is inequality between different pieces of legislation which ultimately have the same aim. That Work Notices to deal with disrepair in buildings which contain housing, have greater powers in relation to recovery of costs than Dangerous Building Notices, would seem to raise questions about what legislation is the most appropriate for local authorities to use.

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

The Housing (Scotland) Act 2006 requires a local authority to serve a Works Notice on all interested parties including owners, any security holder, tenants and agents. Gathering the information on all the interested parties can be a lengthy process. If a building is dangerous it should be enough to serve notice on the owner and any occupier. The owner and any occupier are likely to be those most affected by the conditions and are likely to be people probably responsible for carrying out and paying for any repairs or maintenance.

The Housing (Scotland) Act 2006 replaced Charging Orders with Repayment Charges when recovering costs relating to a Work Notice. This style of Charge could also be used as the means of recovering costs relating to Dangerous or Defective Building Notices. To have two different systems operating concurrently would be difficult for local authorities to administer.

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?

Repayment Charges were introduced through the Housing (Scotland) Act 2006 and should be used rather than the old style Charging Orders. This would align the enforcement of dangerous and defective buildings with other legislation currently being used by Councils.

East Lothian Council Housing Strategy and Development consider there to be a number of benefits to local authorities being given the power to recover costs of dangerous and defective buildings using a Repayment Charge. The main benefit is clearly reduction in unsecured debt and reduced financial liability to the local authority taking action against dangerous or defective buildings. This is a significant barrier to the use of dangerous building legislation. The proposals for the debt to be secured against the property will enable local authorities to make better use of existing legislation and to make decisions based on case merit rather than cost.

The proposals to introduce Repayment Charges to recover costs against dangerous and defective buildings would remove the inequality which currently exists between notices served under the Building (Scotland) Act 2003 and the Housing (Scotland) Act 2006, although.

In addition, by enabling local authorities to secure debt recovery, owners who have been neglectful in dealing with repairs and maintenance are not inadvertently benefited. One of the aims of the Housing (Scotland) Act 2006 is to encourage owners to take greater responsibility for the repair and maintenance of their properties. As the issue of disrepair and dangerous condition are clearly so closely related, it would seem counterproductive to maintain a situation where owners of the most poorly maintained buildings in Scotland can be absolved of their responsibility to pay for works.

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

East Lothian Council Housing Strategy and Development believe the only disadvantage in the proposals is the use of old style "Charging Orders" rather than the recently introduced "Repayment Charges". To have two different systems operating concurrently may be difficult for local authorities to administer.

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

East Lothian Council Housing Strategy and Development believe that owners of dangerous and defective buildings who wish to participate in repairs work are likely to benefit from the introduction of Repayment Charges as the current system can reward inaction. If owners know that they fail to carry out work then the local authority can secure the debt as a first charge on the property (and levy an administration charge), they may be more likely to engage from the outset.

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

East Lothian Council Housing Strategy and Development consider the main disadvantage of using Repayment Charges (as laid out in the Housing (Scotland) Act 2006) to be that they cannot be used to secure debt against a commercial building. As highlighted in the consultation document, the recovery of costs from businesses through debt recovery routes can be particularly difficult. This has previously been highlighted as an issue in relation to the enforcement of Work Notices under the Housing (Scotland) Act 2006 and this opportunity should be used to amend existing legislation to enable Repayment Charges to be used where commercial premises are involved in housing repairs.

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

East Lothian Council Housing Strategy and Development believe that local authorities should have the ability to decide on the urgency of work and set timescales accordingly. If the danger has been secured then allowing owners time to organise the work is reasonable. It would seem that the existing notice period of 7 days to commence work in relation to a Defective Building Notice is impracticable if the aim is to encourage owners to do the required work themselves rather than rely on the local authority to enforce the notice, particularly where groups of owners are involved.

However, it must be ensured that any changes do not result in indefinite delays in work being completed where it is unlikely the owners will ever be able to reach agreement. A Work Notice served under the Housing (Scotland) Act 2006 allows local authorities to set both a time period for commencement and completion and enables the local authority to enforce the notice if the work is not progressing. This would seem to strike the right balance between allowing owners time to organise the work while ensuring repairs are progressed.

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?

East Lothian Council Housing Strategy and Development believe that the timescale for allowing owners to carry out work to dangerous buildings would have to be assessed by the local authority so perhaps allowing a short period will suit needs.

East Lothian Council Housing Strategy and Development have set timescales for complying with a Work Notice, the notice can be varied to suit individual circumstances however in most cases owners have 2 months to commence work, and the work must be completed within 9 months. Having both a commencement and completion date is considered important to ensure the progress of work continues.

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

See answer to Q7

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?

East Lothian Council Housing Strategy and Development consider the main disadvantage to the proposal to automatically share costs equally is that it introduces a system whereby different forms of statutory action are administered differently. This may be difficult for local authorities to administer and may be confusing for the public. Also, if owners are to be given an opportunity to comply with the notice first they must surely abide by any conditions set in the title deeds. It is possible that if one owner has a greater share, they may block work from progressing in the knowledge that if the local authority enforces the notice and recovers expenses they will actually reduce their share of the costs.

Where title deeds exist these should be used as the basis for sharing costs. Where title deeds are silent or unclear then the Tenements (Scotland) Act 2004 should be used. It should be noted that while it is correct that the Edinburgh Confirmation Act is unique in relating to the 'equal share basis' for recovering costs this Act was brought in some time before the Tenements (Scotland) Act 2004 which has sought to address many of the issues relating to organising and paying for common repairs. In theory it should now be unnecessary to set an arbitrary system to fairly allocate costs.

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

As with the answers to previous questions the main concern regarding the proposals for a certification and inspection regime for buildings is that similar provisions already exist through the Housing (Scotland) Act 2006. The 2006 Act gives local authorities the power to issue a Maintenance Order, and requiring owners to submit a 5 year Maintenance Plan. In cases where the Maintenance Plan is not drawn up or

implemented the local authority can take enforcement action. The proposals outlined here appear to have a similar aim to the existing legislative powers and it is unclear the extent to which they would provide an additional benefit in the majority of situations, where housing forms a part of the building which is dangerous.

Although there has been very limited use of Maintenance Orders to date, informal feedback from other authorities indicates that there is an appetite for their use. Local authorities have been required to implement a raft of legislation relating to the repair and maintenance of private sector housing over the past two years and more time is required to assess the full impact of this power. From 1 April 2010 all local authorities have been required to have a Scheme of Assistance in place. One of the aims of the Scheme of Assistance is for local authorities to take a more proactive approach to improving the condition of private sector housing however again more time is required to assess the impact of this duty. Additionally it must be recognised that in a time of reducing budgets, local authorities face significant restraints when taking proactive action against disrepair.

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

East Lothian Council Housing Strategy and Development believe that the proposals to enable local authorities to secure the recovery of the cost of enforcing a Dangerous or Defective Buildings Notice are likely to have a positive financial impact. Given the financial constraints being experienced across Scotland it is difficult to continue to justify public expenditure which is the responsibility of individual owners and which can be extremely difficult to recover. While it is correct that local authorities have a responsibility to ensure that dangerous buildings do not pose a risk, this responsibility should not extend to bearing the cost of the work, and then having to take court action to recover it.

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

East Lothian Council Housing Strategy and Development consider that local authorities should be able to decide their own policies and procedures in relation to buildings which are dangerous or in disrepair. This should include being able to use the legislation which is most appropriate in each circumstance while enabling any costs to be secured.

Local authorities are already familiar with the use of Repayment Charges in relation to Work Notices therefore existing policies and procedures should be in place.

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

