

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

Consultation Reply – Stirling Council (Building Standards)

Question 1

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

Regarding dangerous buildings, the difficulty in recovering costs for work legally organised by a Local Authority, if the owner, who is actually responsible, does not carry out the work specified in a dangerous building notice. With no Charging Orders, the debt has to be recovered by civil means, sometimes resulting in Local Authorities, and particularly the Building Standards service, being left with outstanding debts that cannot be recovered, and eventually have to be written off against building standards revenue budgets.

Unlike dangerous buildings, where Local Authorities have a statutory duty to act to remove danger, when dealing with defective buildings, the Building (Scotland) Act 2003 only provides discretionary powers to the Local Authority to act. What constitutes a 'defective building' is open to discretion with currently no definition or guidance. Where Local Authorities try to enforce defective building legislation there is difficulty in pursuing civil debt. However, the ability to enforce repairs on defective buildings, which are not as yet dangerous but may become dangerous, is a useful to protect the public and maintain the built environment.

It is difficult for responsible owners to carry out communal repairs where there are absent or irresponsible owners.

The reluctance of Local Authorities to act on defective buildings is mainly down to the difficulty in recovering costs. If the Local Authority carries out repair work, and costs aren't recovered, the result is that public money has been used to benefit irresponsible building owners.

Tracing owners of defective or dangerous buildings can be costly and time consuming for Local Authorities, particularly where a building has multiple owners. Even if owners can be traced, it is difficult to get them to carry out remedial works.

The enforcement of defective buildings requires significant Local Authority resources.

Many Local Authorities do not have a budget for dealing with dangerous or defective buildings. It is important that there is an ability to recover all costs expended from owners. The re-introduction of Charging Order powers would be a positive step.

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?

The introduction of Charging Orders into the Building (Scotland) Act 2003, which would allow for more efficient cost recovery.

Rationalisation of the current legislation dealing with defective and dangerous buildings in to a more focussed piece of legislation would be beneficial.

Greater clarity within the legislation on what is meant by a defect.

Procedures to be followed in the event of a Local Authority being unable to trace a property owner and powers for a Local Authority to obtain ownership details currently restricted by the Data Protection Act.

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?

Where owners of properties cannot be traced or are unable to pay the costs incurred by Local Authorities, Charging Orders or repayment charges will assist in recovery of costs. Owners are responsible for their own properties. Local Authorities, given current budgetary pressures, should not be held responsible financially for the inaction of property owners. Use of public funds to address private buildings should be minimised - Charging Orders would support this. Also, as a Charging Order is placed on a property rather than an individual it allows more security to Local Authorities by enabling a claim against the property.

Question 4

What do you see as the disadvantages of Charging Orders?

The time period between the issuing of a Charging Order and cost recovery.

The value of a property could be less than the costs of repairing or removing the danger. A Charging Order will place a burden on a property or site.

Question 5

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

Charging Orders provide a means of identifying any financial burdens against the property.

A Charging Order could give an owner a means of paying for repairs by instalment.

In a multi ownership/shared responsibility building Charging Orders would ensure that responsible owners could have the necessary work done and only pay their fair share of the cost.

Question 6

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

The time before the Charging Order was removed from the property by repayment of the debt to the Local Authority.

An irresponsible owner would have to contribute to the maintenance or repair of their property against their wishes.

A Charging Order on a property could act as a deterrent to its sale.

Question 7

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

No significant benefit to changing the notice period.

Delaying timescales could cause further deterioration in a building leading to it becoming dangerous.

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?

The existing legislation provides flexibility in the timescale set for commencement and completion of the works.

Question 9

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

Main aim of providing easier and workable cost recovery procedures and reviewing the processes within the Building (Scotland) Act and other legislation is supported.

Advantages of the proposal outweigh disadvantages.

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?

Due to the many options of shares and legal responsibility, retaining flexibility in applying shared cost recovery to suit the project would be preferable.

Disadvantages of the proposal outweigh advantages.

Question 11

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

Difficult to comment without more detail. There could be benefits to this proposal provided its administration did not over burden Local Authorities.

Question 12

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

Enhancing the ability of Local Authorities to recover costs incurred in dealing with defective and/or dangerous buildings is positive.
Concern about the currently available resources of Local Authorities regarding the certification and inspection regime for buildings.

Question 13

Do you have any comments on enforcement of the proposals?

Local Authorities can only implement inspection regimes and enforcement policies if suitable resources are made available.

Question 14

Are there any quality issues that arise from these proposals?

No comment.