



Glasgow Housing Association Consultation Response – The Building Repairs (Scotland) Bill Consultation

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

The consultation paper well summarises the current problems around dangerous and defective buildings legislation. Glasgow Housing Association (GHA) agrees that the combination of a backlog of repairs, the cost to local authorities due to poor recovery rates and related lack of proactive activities represent not just a potential threat to public safety but also a threat to the integrity of Scotland's historic built environment.

From GHA's perspective, we pride ourselves in being a responsive, diligent and responsible landlord and property manager and take a proactive approach to preserving the condition and safety of the properties for which we are landlord and act as a factor. However, where individual owners refuse to voluntarily pay for identified and required repair work, we face a similar challenge to that faced by local authorities.

The underlying problem of a general lack of maintenance leading to dangerous buildings requires to be addressed to prevent a recurring cycle of this problem as part of the legislation.

GHA is a partner in the Glasgow Community Partnership and notes that its fellow partner, Glasgow City Council, (GCC) as the local authority, is best placed in Glasgow to explain how the above problems relate specifically to the city. We have been working with GCC on the application of maintenance orders, but success in this area is dependent on GCC's ability to fund firstly, and then recover costs from owners.

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

The legislation could be more rigorous in the powers granted to local authorities to pursue debts for work carried out on properties. The current regime of pursuing civil debt is clearly insufficient. More proactive use of maintenance orders could include renewals and regular maintenance participation.

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?

The main benefits of the introduction of charging order are as follows –

- initially registering the debt is comparatively inexpensive compared to the current scenario of pursuing civil debt
- charging orders get priority over other debts
- any new owners of a property will be made aware that such a charging order would be added to a purchase price and a local authority might be reassured that they will see their debt settled eventually, albeit in an unspecified timeframe.

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

A drawback of the charging order is that a local authority or other body would potentially have to wait until a property is sold until their outlay on correcting defective or dangerous buildings is repaid, although this will be an improvement on the civil debt route. Ideally, a debt recovery route with a more specified timeframe would be the first option, if such a route could be enforced.

Local authorities must be fully accountable for costs that they incur for the works completed and for 'any expenses they make in favour of themselves'. There appears to be no mechanism for ensuring that costs are transparent and reasonable.

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

The new legislation may encourage owners to engage with their local authority regarding the state of their property, given that they will be responsible for the cost of corrective work in the long term. Long term maintenance of property will reduce the requirement for major repairs and increase the life expectancy of the property.

Owners would also benefit as improvements will remove/reduce the risk of a legal action being raised against them resulting from injury.

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

Owners might find it more difficult to sell their property if there is a charging order as this would flag that there had been a historic problem with lack of shared ownership maintenance and responsibilities. The presence of a charging order may also impact on market pricing. This could delay further improvement and repair work which a new owner might undertake, and also delay repayment to the local authority.

It is not clear how a charging order would work where the building has to be demolished and the land cleared.

The extension of the City of Edinburgh Council Order Confirmation Act 1991 (or similar legislation included in the Bill) to other parts of Scotland might help to simplify liability in the case of shared buildings. Caution should be applied where the property has a comprehensive title deed. Our understanding is that Edinburgh suffers from a lack of title deed support (as do some other parts of Scotland). The Tenement (Scotland) Act 2004 which was introduced to address these concerns also requires to be considered.

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

Twelve weeks seems like a reasonable timeframe but this is dependent on the extent of the building issue and associated financial implications.

Could some flexibility be incorporated into the legislation?

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?

As stated above, it is difficult to give a specific time frame for all building repairs without being aware of the specific issues surrounding a particular property (and the specific associated financial implications of repair work). The case of dangerous buildings is a case in point – if a building is deemed dangerous then corrective work must be carried out immediately and might make any notice period unrealistic. An example of this might be when an act of God renders a building dangerous literally overnight.

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

The proposal has a clear timeframe and an appeal process. It appears to be narrow in its application of the timeframe: 12 weeks with no requirement on an owner to prove they are taking any preparatory action during that 12 weeks and no apparent allowance where an owner is taking very reasonable action, but cannot achieve the 12 week deadline. A flexible approach based on proven progress might achieve a more satisfactory outcome.

Disappointingly, there is no recognition of the beneficial role a factor can play and the need for partnership working. A factor should be able to ‘fast track’ cases where it has taken all reasonable steps to progress necessary works and there is clear evidence that owners have failed to meet their responsibilities.

Proposed notices should be copied to any existing Factor of the building. Factors already work closely with local authorities via maintenance orders with the local authority having the power to appoint a factor where none exists.

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?

The advantage is that liability could be more clearly established particularly where deeds are silent or absent, but shared ownership can be very complex and open to alternate interpretations. There would need to be a simple and cost effective mechanism for settling disputes about application of shares where this option was applied.

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

There may be advantages to a certification and inspection regime – primarily the likelihood of positive outcomes in relation to the ultimate goals of promoting public safety and the protection of the built environment in Scotland, if it could be consistently applied and adhered to.

However, this may prove difficult to administer. The financial implications of a new scheme of certification and inspection would appear to be potentially significant, particularly in the current

financial climate, and the introduction of a 'Property MOT', whilst potentially beneficial, might need to be considered on a phased basis. Participation by the owners would be essential.

A more proactive approach to routine maintenance and cyclic maintenance would be more advantageous, such as compulsory maintenance funds particularly in blocks where 'last resort' intervention has been required. This would ensure that finances are going directly into the upkeep of the property as opposed the administration and retention of certificates.

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

Charging orders would make local authorities more likely to collect debt incurred through defective/dangerous building action, but may lead to more activity in this area.

Local authorities could consider a Notice of Potential Liability as a cheaper option or first step. This has proven successful in the factoring industry.

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

Is there Scottish Government support for local authorities to enforce the proposal? This is unclear in the paper. Any legislation should be explicit as to what body or bodies enforce the proposals and the methods of enforcement.

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

Presumably a full equality impact assessment would be carried out on any new legislation. There is a possibility that people with particular 'protected characteristics' as set out in the Equality Act 2010 might be affected more than others by changing legislation. An example of this might be older people on low incomes who live in buildings with multiple owners, such as traditional Scottish tenements, which become defective or dangerous.