

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

Response by Highland Council to the consultation document published by the office of David Stewart MSP titled “Keeping Scotland Safe”.

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

- Identifying the current owner/s of a property/ies, particularly when urgent action is required often causes delays in producing Notices to serve on the owner.
- The staff resource most Local Authorities (LAs) have for dealing with defective and dangerous buildings means the LAs can only provide a reactionary level of service to these types of incidents. If a proactive service were to be provided additional resources would need to be made available
- The lack of existence of a budget to resource an enforcement team within LA Building Standards Services to deal with defective and dangerous building incidents limits the effectiveness of the Service
- A difficulty exists in recovering costs from the owner of a building following enforcement action or where repair work has been carried out by the Local Authority meaning public money is being used for the benefit of unscrupulous owners of buildings.

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

- The financial resource used by many Local Authorities to identify, initiate and carry out enforcement action is paid from the Building Warrant fee income. Is it

fair that the Building Warrant fee paying customer subsidises the Local Authority's enforcement obligation?

- The introduction of Charging Orders to Building (Scotland) Act 2003 would permit the Local Authority to recover the costs incurred in identifying and taking enforcement action when dealing with defective and/or dangerous buildings by placing a burden on the property for recovery of expenses incurred
- The inability and/or the costs for a Local Authority to effectively recover expenses incurred in dealing with defective and/or dangerous building incidents has an impact on Council budgets

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- The repealed Building (Scotland) Act 1959 permitted Local Authorities to recover costs incurred in dealing with dangerous building incidents safe in the knowledge that the expenses could be recovered under a Charging Order. The current Building (Scotland) Act 2003 has no such facility. Charging Orders are a mechanism whereby costs incurred by a Local Authority could be recovered
- Introducing Charging Orders to the Building (Scotland) Act 2003 will provide Local Authorities with a useful tool for the recovery of costs and will encourage a more proactive approach to inspecting potential defective buildings as the fear of spending public money without the likely guarantee of recovery will be removed

4. What do you see as the disadvantages of Charging Orders?

- A Charging Order will place a burden on a property or site. This might reduce the value or attractiveness of a site or building to a potential purchaser meaning the Local Authority may wait a long time or may never recover the expenses incurred if the site cannot be sold

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

- A Charging Order could permit the owner of a building to agree with the Local Authority a means of repayment of costs incurred over an agreed period of time or at the sale of the property
- An dishonest owner might opt not to sell a property to avoid paying a debt to the Local Authority

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

- If a Charging Order is placed on a property the attractiveness or effective value, to the owner of that property, is reduced as the financial burden remains on the property until such time as the debt is paid off.

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

- Advantages

1. An extended period of time for the commencement of operations may allow the owner some flexibility to secure best estimates for the work to be undertaken. However, I am of the view 12 weeks notice for starting work is excessive. Is there evidence from the customer to confirm 7 days notice is too short?

- Disadvantages

1. An unscrupulous owner may prolong starting work to the very last minute

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?

- Yes. But again, is there evidence from the customer to confirm they need more time to initiate the starting of repairs?

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

- Advantages

1. Local Authorities will have a greater probability of recovering costs incurred in dealing with defective and/or dangerous buildings.
2. Allows possibly a more realistic timescale for carrying out the work in respect of defective buildings but I don't think there is the evidence from the customer that a start date 12 weeks in advance of the date of the Notice is welcome.
3. The owner has an avenue via the Sheriff to appeal against a Notice

- Disadvantages

1. In the case of buildings requiring complete demolition, the costs incurred could be more than the value of the vacant site resulting in a loss for the Local Authority.

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?

- Advantages

1. Equal shares apportionment should simplify the legal and financial procedures for Local Authorities
2. Equal shares apportionment removes the need for Local Authorities to apportion costs based on the rateable value of properties. A very burdensome and time consuming process

- Disadvantages

1. Commercial property/ies on the ground floor may benefit more than housing on upper floors as the current rateable values for these properties differ. However, under the proposal of equal shares apportionment householders will effectively end up paying more than commercial properties.
2. Equal apportionment may be seen as unfair to the owners of smaller properties in shared buildings where one property may be twice the size of a neighboring one. A basement flat for example may simply be a bed-sit arrangement whereas on an upper level there may be a three bed-roomed property

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

- Advantages

1. Requiring the owner to hold a 'certificate of building repair,' that will be reviewed every 5 or 10 years, in theory sounds a very good proposal
2. Property owners would have to take responsibility for the maintenance of their own buildings.

- Disadvantages

1. A certification scheme places another burden on the responsible property owner. I suspect the owner that allows their properties to fall into a state of disrepair in the first place will pay no attention to a certification scheme
2. Expecting Local Authorities to monitor for evidence of a 'certificate of building repair' will be nigh on impossible to achieve and a pointless measurement given the likelihood of the unscrupulous owner ignoring the need for a building MOT
3. Placing additional responsibilities on property owners to ensure 'building repair certification' is in place will be nigh on impossible to implement

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

- Improving the prospect of Local Authorities recovering costs incurred in dealing with defective and/or dangerous buildings has to be viewed as a significant change for the better.

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

- If proactive inspection regimes and enforcement policies by Local Authorities are what David Stewart MSP envisages following the introduction of Charging Orders this will only be possible if suitable additional resources are made available to Local Authorities
- The powers proposed will at least increase the powers available to Local Authorities to carry out the necessary works, if they wish.

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

- None that I am aware of.

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