

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

### **Consultation Reply**

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Response by the  
Scottish Association of Building Standards Managers [SABSM]

March 2011

SABSM welcomes the opportunity to respond to the private member's consultation paper on The Building Repairs (Scotland) Bill and would respond as follows.

### **Question 1**

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

The aims of the 2003 Act are well founded in providing Local Authorities an ability to take action on dangerous and defective buildings. The power to enforce repairs on defective buildings which are not as yet technically dangerous replicates powers previously available to Local Authorities. However, the diminution of this Act compared to its predecessor [the 1959 Act] by removing the recovery of costs mechanisms through Charging Orders means that these aims have been fatally flawed.

#### **Difficulties in recovering costs:**

1. With regard to dangerous buildings, the main problem is the recovery of costs for work legally organised by a Local Authority, if the owner does not carry out the work specified in a dangerous building notice. With no Charging Orders available the debt has to be recovered by civil means, and there are a number of instances where Local Authorities, and specifically the Building Standards service, has been left with outstanding debts. Sometimes these debts cannot be recovered, and are eventually written off against building standards revenue budgets. The identification of owners can cause difficulties.
2. 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 does not place a statutory obligation on Local Authorities but provides discretionary powers to act. Section 28 (1) of the 2003 Act states that a Local Authority 'may serve' a defective building notice. This allows the interpretation of what constitutes a 'defective building' open to the discretion of each Local Authority. Currently, there is no definition or guidance of the issues which would fall into this category being so generic. There is also a lack of incentive for Local Authorities to enforce defective building legislation mainly due to difficulty and resources required in pursuing civil debt. However, the ability to enforce repairs on defective buildings which are not as yet technically dangerous is a useful tool in protecting the public interest and in maintaining the built environment in Scotland.
3. There is ample evidence to suggest that the driver for action on defective buildings is conscientious owners who cannot progress a legitimate essential communal repair because of absent owners or unscrupulous owners of buildings. They approach the Local Authority as a last resort in an attempt to protect their own property but which has a by product of protecting not only their property but those of neighbours.

4. Local Authorities are clear in their statutory duty to act to remove or repair dangerous buildings. There is less evidence of activity in the non-statutory discretionary power to act to remedy defective buildings. In both cases part of the reluctance to proactively seek to act can be laid at the difficulty of the recovery of costs.
5. Where difficulties exist in recovering costs from the owner of a building following enforcement action or where repair work has been carried out by the Local Authority the end result is that public money is being used for the benefit of unscrupulous owners of buildings.
6. Communal responsibility for maintenance and repair of buildings is not understood by owners. Responsible owners who do wish to carry out communal work are often frustrated and discouraged when other owners do not wish to fund work or do not agree that such work is necessary.

#### **Difficulties in establishing ownership:**

1. Tracing owners of defective or dangerous buildings can be costly and time consuming to Local Authorities, particularly in instances where a building has multiple owners. Considerable time and resources are spent on tracing owners, through legal searches if necessary, and establishing equal share of responsibility. Even when owners can be traced, difficulties are experienced in getting owners to carry out remedial works as it is common for owners to live out with the district, and in some instances, out with the country.
2. The costs involved in undertaking extensive tracing can be prohibitively expensive. Typically, it costs up to £500 to engage a firm of professional searchers to track down a title dead.
3. Where ownership of a building is by a person or company who reside or are based out with the UK, experience has proven that debt recovery is extremely difficult, requiring legal action to be taken in the country where the owners are based.
4. The Data Protection Act limits the information a lender may make available to a Local Authority.

#### **Resources:**

1. The enforcement of defective buildings requires significant Local Authority resources in terms of suitably qualified and experienced professional staff. This has an affect on workload and financial implications on a number of Local

Authority departments, i.e., building standards, asset improvement, legal, finance etc. In many departments these resources are not readily available.

2. Local Authority budgets for dealing with defective and dangerous buildings are being reduced annually, and in many cases, no such budget exists. A lack of Local Authority resources, both financial and staffing, influence a Local Authority's decision making process in dealing with defective buildings. It is of vital importance, therefore, that there is an ability to recover any costs expended in fulfilling this remedial role AND equally importantly that ALL costs, including administration costs borne initially by the Local Authority, are recovered from those owners who have defaulted and not from the public purse.

**SABSM are clear in their view that the re-introduction of Charging Order powers would re-invigorate the actions taken by Local Authorities under the 2003 Act as cost recovery procedures would be robust and workable as evidenced under the 1959 Act.**

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## 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?**

SABSM are aware of varying pieces of legislation available to a Local Authority to deal with defective buildings namely:

Section 179	Proper Maintenance of Land Notice – Town and Country Planning (Scotland) Act 1997
Section 28	Defective Buildings Notice – Building (Scotland) Act 2003
Section 30	Dangerous Building Notice – Building (Scotland) Act 2003
Section 30	Works Notice – Housing (Scotland) Act 2006
Section 43	Maintenance Plans – Housing (Scotland) Act 2006
Sections 20-22	Power to advance well being - The Local Government in Scotland Act 2003

The consultation paper itself references the Civic Government (Scotland) Act 1982 (The 1982 Act) and the Housing (Scotland) Act 1987 (The 1987 Act).

1. Given the above plethora of legislation, it would make sense for a single piece of legislation to apply consistently across all building types unless there were particular aspects relating to dwellings which it was thought were worth keeping. Rationalisation of the various pieces of current legislation dealing with defective and dangerous buildings would create fewer and more focused legislation combining the best elements of the legislation presently in place.
2. The current legislation should be clearer in terms of what is meant by a defect and what the legislation is intended to address e.g. of such significance that if not repaired may impinge on the future safety of
  - the building,
  - adjacent property,
  - occupants or public in general.

What is a defective building? The lack of a definitive answer to this may contribute to wide ranging opinions and interpretations throughout Scotland and thus varied application of enforcement measures.

3. In relation to defective buildings, enforcement should remain at the discretion of Local Authorities. The facility for Local Authorities to be able to place a charging order on properties if the costs incurred are not paid in a reasonable time, may give some confidence to Local Authorities to serve notice and arrange work in default in the more serious cases.
4. The current legislation under the Building (Scotland) Act 2003 states the Local Authority may undertake work in default and seek to recover all costs from

owners, it does not allow the Local Authority to take on a part share of the work in conjunction with those owners who are willing to do the work. It would be beneficial if this legislation could be changed to make this an option while, at the same time addressing contractual and liability issues.

5. It is considered that there would be merit in amending the Building (Scotland) Act 2003 to provide for Charging Orders or repayment charges being recorded / registered against sites where there has been demolition and that the opportunity could be taken at the same time to introduce these for the cost of repair works.
6. Procedures to be followed in the event of a Local Authority being unable to trace a property owner. Powers for a Local Authority to gain access to ownership details restricted by the Data Protection Act. A legal requirement to record ownership within the Registers of Scotland.
7. The Housing (Scotland) Act 2006 makes it clear that the property owners are primarily responsible for property maintenance - no such legally backed message exists for non domestic properties.
8. Consideration could be given to linking databases such as Local Authority and national Register of Buildings at Risk, perhaps as an expanded version of the Buildings at Risk Register maintained by the Scottish Civic Trust of behalf of Historic Scotland. Streamlining of the various pieces of legislation would be useful.

**SABSM supports the introduction of Charging Orders into the Building (Scotland) Act 2003, which would allow for more efficient cost recovery, and allow consideration of the use of the defective building procedures under the Act. Legislation should be simplified in order that powers are contained within as few pieces of legislation as feasible/possible.**

**However, while the aspirational aims to rationalise the various pieces of current legislation dealing with defective and dangerous buildings are to be applauded, SABSM are strongly of the view that the re-introduction of Charging Order powers into the 2003 Act should be actioned now.**

### 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?**

1. Where owners of properties cannot be traced or are in financial straits and unable to pay the costs incurred by Local Authorities, Charging Orders or repayment charges will assist in recovery of costs in that the costs can be recovered out of the value of the property if it is sold. The introduction of Charging Orders would enable a possible saving to Local Authorities by avoiding legal action against owners if pursuing civil debt through court action. This would also encourage owners to carry out works and avoid a burden against their Title when selling their property or refinancing.
2. Ultimately property owners are responsible for their own properties. Local Authorities, given current budgetary pressures, should not be held responsible financially for the actions, or should we say, non-actions of property owners and Charging Orders is at least a mechanism whereby monies can be recovered. The current economic situation has led to many property developers going bankrupt and this has resulted in many property developments being left unfinished. These developments can, on occasions, quickly turn in to eyesores and in some instances become dangerous. Local Authorities then have to take statutory action to remove the danger or make the building safe.
3. Local Authorities would still require to access funds at present time in order to pay the costs they incur, including costs incurred by contractors that they engage to carry out work to rectify the situation. Repayment of these costs to Local Authorities, even using charging orders, can be many years after the time of placing of the charging order on the property. Local Authorities would require to absorb this debt until such time as it was repaid.
4. The public purse should only be used sparingly to address private buildings. Charging Orders could minimise public expenditure.
  - Reduce debt currently experienced by Local Authorities after acting in default of a property owner in addressing a defective or dangerous building.
  - Reduce Local Authority costs and time involved in debt recovery.
  - Local Authorities should be a preferred debtor before "civil" debtors.
  - In simple terms the cost of pursuing a debt through civil action or "normal debt recovery" is far greater than the application of "Charging Orders on property.
5. Crucially, a Charging Order places the debt on the building and/or land and not on an individual who cannot be found or is absent. As a Charging Order is placed on a property rather than on an individual it allows greater security to Local

Authorities by enabling a claim against the property. This would allow, in circumstances where the owner cannot be traced, a more timely resolution to the defects and provide for an additional method of debt recovery, with reduced cost outlay for their production and registration.

6. In addition, it should be clear that any such Charging Order should be treated as “first ranking” in relation to any standard securities. Any lending decision is taken in a commercial context and in our view, this would promote greater interest from lenders as to whether obligations to maintain property are being met.

**Introducing Charging Orders to the Building (Scotland) Act 2003 will provide Local Authorities with a useful tool for the recovery of costs and could 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**

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#### Question 4

##### What do you see as the disadvantages of Charging Orders?

1. There can be a considerable time period between the issuing of a Charging Order and cost recovery, depending on the circumstances surrounding ownership. Charging Orders are not the entire answer, as there can still be problems with sites or buildings of modest value. However, if the owner could not be found or was insolvent, the debt could still be redeemed through a burden on any future sale of the buildings or land.
2. Dependent upon the procedures contained within the Charging Orders, the recovery of costs could span a prolonged period of years or indeed repayment be delayed until the ownership of the property changes.
3. The value of a property may be less than the costs of repairing or removing the danger. 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.
4. It is incumbent on the legislators to include flexibility within the Charging Order procedures to allow owners and Local Authorities to come to different financial arrangements if this was deemed to be mutually acceptable to negate perceived disadvantages and to secure repayment of costs initially attributed to the public purse.

**To this end, Local Authorities must remain pragmatic in their approach to ensure a measured and proportionate response to a building defect or danger.**

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## Question 5

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

1. If applied with flexibility and with variable methods of repayment the civil debt against the land the Charging Order procedures provides a means of identifying easily and quickly any financial burdens against the property.
2. Charging Orders can be designed to permit various methods of repayment including
  - The charge plus an annual interest payment which can be paid at any time.
  - The annuity which is set at the time that the Order is applied. The annuity can be seen as a form of endowment policy whereby, if the annual annuity sum is paid for the period set, the debt is paid off.
  - The debt is settled at the time a property transacts.
3. An owner could view a Charging Order as a means of paying for repairs by instalment over a number of years.
4. Conscientious owners in a multi ownership/shared responsibility building may be willing to effect repairs but the irresponsible or unwilling owner may not. Charging Orders would ensure that the conscientious owner would have the necessary work executed and only pay their fair share of the cost of the repairs.

**SABSM would wish to emphasise the building standards role in seeking to protect the public interest. In their view an effective defective building procedure MUST include effective recovery of costs. Not only does this achieve this public interest aim but additionally it protects those conscientious owners who are currently disadvantaged from inactivity by unscrupulous owners and, indeed by Local Authorities by their failure to act on their discretionary powers.**

**SABSM are equally clear in their view that the re-introduction of Charging Orders will NOT suddenly generate huge activity to deal with defective buildings. What it would do, however, is provide a useful workable tool to provide comfort to both the Local Authority and to building owners that there is a workable solution to address many multi-ownership defects for example.**

## Question 6

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

1. Under the Building (Scotland) Act 1959 when a Charging Order was served on a property it could be a significant period before the Charging Order was removed from the property by repaying the debt to the Local Authority.
2. The unwilling or irresponsible owner would have to contribute to the maintenance or repair of their property against their wishes.
3. The presence of a Charging Order on a property could act as a deterrent to the sale of some properties in that the repayment of a Charging Order could reduce the monetary gain to the owner from selling the property.
4. A charging order would make it difficult for a building owner to avoid payment to a local authority for costs incurred in carrying out remedial works. The order would become a burden on a building owner and could affect property or land value which could potentially delay a sale. In the event of extensive remedial works including demolition works where the costs are substantial there may be little, if any, equity left in the building/ site rendering the building/site valueless to the owner either as security or on a sale.

**There is no disadvantage from the Local Authority's perspective in our efforts to protect public funds, whilst ensuring public safety.**

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## Question 7

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

1. No changes are necessary to the legislation as Section 28 (12) (b) of The Building (Scotland) Acts 2003 permits a Local Authority, at any time, to substitute later dates contained within the Notice covering both the commencement and completion timescales.
2. There does not appear any significant benefit to changing the notice period. Section 28 (12) of the Building (Scotland) Act 2003 already provides Local Authorities with the flexibility to waive or relax any requirement of the notice or substitute a later date for any date specified for commencement or completion.
3. Delaying timescales etc in the manner suggested could ultimately result in further deterioration to property which could result in a structure becoming dangerous.
4. The guidance which should accompany the new statutory instrument could provide clarification to both owners and Local Authorities on this matter.

**Clearly the time required to carry out work will depend on the nature of the work and there may well be instances where a relatively short period of time would be required rather than the fairly lengthy period of 12 weeks suggested.**

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### 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?**

1. Where large scale works like roof repairs or other structural work is required, 12 weeks is likely to be insufficient, particularly in communal properties. A defective or missing gutter causing water penetration into one or more properties in a block should not need 12 weeks to comply and every day it continues adversely affects the lives of the affected residents and their homes.
2. Where compliance with the notice is unlikely, a short expiry of the notice is appropriate. There is no benefit to affected residents to giving an extended period to comply if no work is likely to be carried out in that period. The sooner the notice expires and works in default can be initiated, the better for adversely affected parties.

**The existing legislation provides flexibility in the timescale set for commencement and completion of the works. The expectation is for this to be used appropriately and pragmatically by professional Local Authority staff to achieve the required outcomes.**

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## Question 9

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

#### Advantages

- Local Authorities will have a greater chance of recovering costs incurred in dealing with defective and/or dangerous buildings.
- Allows possibly a more realistic timescale for carrying out the work in respect of defective buildings but there is little evidence to suggest that a start date 12 weeks in advance of the date of the Notice is necessary – flexibility in such matters is more workable to both the Local Authority and the owner.
- The owner has an avenue via the Ombudsman or Sheriff to appeal against a Notice. However, clarification would be required on the introduction of an appeal to an Ombudsman as their decision would not be legally binding. A building owner who did not accept the Ombudsman decision could still have a right of appeal to the Sheriff.

#### Disadvantages

- 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.
1. It could be argued that the proposals do not address other equally pressing issues surrounding defective and dangerous buildings as illustrated in the above replies to previous questions. An opportunity exists:
    - to introduce a simplified legal framework incorporating the best elements of other legislation and
    - to provide clear guidance on implementation and
    - to address the cost recovery process.
  2. Further development of the procedures would provide additional benefit. Is there a need to recognise, in the procedures, that defective buildings can quickly become dangerous buildings? The concept of a 'dangerous building' should be extended to cover such situations by providing clarity on the definition of a "defective" building.

**On balance SABSM are content that the main aims of providing easier and workable cost recovery procedures and revisiting the processes both within the Building (Scotland) Act and other related legislation should be supported.**

**They are also clearly of the view that any advantages clearly outweigh any perceived 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?**

**Advantages:-**

- Simplify and quicken both legal and financial processes for the Local Authority.
- No need for Local Authorities to access and interpret Title Deed conditions.

**BUT in this case the disadvantages outweigh the advantages**

**Disadvantages:-**

- Conflicts with legal agreement in shares buildings.
  - Unfair to owners of smaller properties.
  - Larger property owners may be encouraged not to carry out repairs under their own volition as in waiting until the Local Authority intervenes would reduce the cost paid by them.
1. SABSM understand that the Tenements (Scotland) Act 2004 may have an impact on this matter and consequently care is needed to avoid ambiguity of intent.
  2. Although potentially time consuming, given the many complexities of ownership which can occur in buildings likely to attract action under these procedures, the introduction of procedures to allow title deeds to be studied could be / should be investigated.

**Given the many and potentially varied options of shares and legal responsibility, on balance, SABSM believe that a more workable solution is to retain flexibility in applying shared cost recovery to suit the project which is actioned. Fairness and equitability is more important than easiness for the Local Authority.**

## Question 11

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

1. It is difficult to assess the merits of a scheme of certification and inspection, particularly in the absence in the consultation paper of any detail, laudable though it would appear to be at first glance. The detail of the scheme would however need to be “fleshed out”. It seems inevitable that there will be cost implications, e.g. (1) the costs involved in the initial and also regular or other inspections by suitably qualified professionals (2) substantial repair or upgrading costs would arise initially and this could have cost implications for local authorities in situations where owners seek from them grants to assist with such costs and (3) local authorities would also incur costs in administering and policing the scheme.
2. The administration of such a certification scheme would be a major burden on whichever organisation was chosen to oversee it, with a lack of suitable resources, both in staff and finance. The scheme could be simplified if only properties in designated city/town centres were included.
3. It is difficult to see where the resources to deal with a certification and inspection regime could be found from existing budgets.

#### Advantages

- 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.
- Property owners would have to take responsibility for the maintenance of their own buildings. Some would argue that this is long overdue.
- If carried out correctly by Local Authorities it would ensure that the maintenance and repair of private properties would have a higher profile.
- Address issues more quickly before buildings significantly deteriorate.
- Safeguard existing built environment.
- Increase longevity of present building stock.
- Certification should reduce the number of direct interventions by the Local Authority. It will help those co-owners who take an interest in their property by engaging all owners in maintenance. It will provide more confidence in property sales for the buyer by confirming that the property achieves a reasonable standard.
- In principal the notion of a property MOT sounds like a good idea. Rather than being linked to a Local Authority Enforcement role, it could be linked to a mandatory requirement for Buildings Insurance, similar to the situation with cars, so would not necessarily be an additional burden on the Council Tax payer.

### **Disadvantages**

- A certification scheme places another burden on the responsible property owner but suspect the owners that let their properties fall into disrepair in the first place will pay no attention to a certification scheme
- Expecting Local Authorities to monitor properties or the owners for evidence of the 'certificate of building repair' will be nigh on impossible to achieve without significant additional resources being made available.
- Proposals may conflict with this requirement of the Housing (Scotland) Act 2006. The administration of the system could prove to be a huge task, if placed with, Local Authorities. Maintaining a register of buildings and owners could prove complex and costly especially as buildings are subsequently sub-divided, demolished or re-built.
- The contents of a certificate would need to be clearly defined e.g. what is defective?
- Liability must be considered – if a certificate is not received/renewed, should the Local Authority investigate?
- There are a number of disadvantages to the MOT system, not least that would place an additional burden on property owners which might seem excessive i.e. this would be relevant to tenemental properties etc in city and town centres where there would be a greater risk to the public should a building fall into disrepair.
- There would also be a risk of opening the door to unscrupulous companies scaring people into unnecessary works (this has been documented in the case of factoring in the past.) How would the process be monitored and by whom?

### **GENERAL**

1. When referencing current legislation within the consultation document, no mention is made of the relationship with the 1997 Planning Listed Buildings and Conservation Areas Scotland Act in respect of urgent works / repairs notices or new provision in the Heritage Amendment Bill which includes a recovery of costs mechanism. This is important because it allows for CPO for benevolent purchasers and full reinstatement of all required repairs including all architectural detail.
2. Grant assistance. Whilst statutory repair grants may now be a thing of the past there is still potential for assistance via other sources is Historic Scotland or Heritage Lottery

**There needs to be more consideration given to removing ownership obstacles and positively encouraging activity through partnership working with willing developers and other agencies.**

**Building owners need to be provided with such information to assist them in ensuring buildings are maintained with any recourse to enforcement action being reduced to a backstop measure where all else fails or where public safety is at risk.**

## Question 12

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

#### General

1. 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.
2. The proposals are generally welcomed. However the success or otherwise of them will depend very much on how Local Authorities fund, both the enforcement and the necessary works. The powers proposed will at least increase the powers available to Local Authorities to carry out the necessary works, if they wish.
3. The only costs which local authorities require to incur are in relation to dangerous buildings. In that regard the financial implications would be the prospect of a better outcome for local authorities in recovering costs if charging orders or repayment charges were to be introduced by amendment to the Building (Scotland) Act 2003. If that Act was also amended to provide for charging orders or repayment charges for defective buildings it would allow local authorities to utilise the provisions of just one statute for both dangerous and defective buildings costs. Comment on financial implications has also been given in the response to Question 11.
4. The present system for recovering civil debt is not an effective means of cost recovery for local authorities, with many costs incurred when dealing with dangerous buildings regularly having to be written off. The proposal to introduce charging orders as an effective cost recovery regime would provide the necessary re-assurance to local authorities that costs incurred will eventually be recovered at a later date. This may result in local authorities taking a more pro-active approach with enforcement of defective buildings legislation in the knowledge that costs will be recovered from building owners. However, there may still be apprehension by local authorities in relation to enforcing such legislation as the initial cost outlay may be outweighed by the time period involved in recovering costs. This is particularly relevant at this time as budgetary cuts limit funds being diverted to this type of work in the future.

#### Certification and Inspection Regime

**While supporting the principle of a certification and inspection regime for buildings SABSM have significant concerns in respect of currently available resources to address such matters.**

### Question 13

#### Do you have any comments on enforcement of the proposals?

1. If proactive inspection regimes and enforcement policies by Local Authorities are what the Scottish Government envisages this will only be available if suitable resources are made available. Local Authorities will be unable to resource enforcement activities otherwise.
2. The powers proposed will at least increase the powers available to Local Authorities to carry out the necessary works, if they wish.
3. It is anticipated that the comments raised within this questionnaire, if incorporated into the final statutory arrangements, would result in Scotland benefiting from a more robust and fit for purpose legal framework designed to address the issues of defective and dangerous buildings.

**While supporting the principle of a certification and inspection regime for buildings SABSM have significant concerns in respect of currently available resources to address such matters.**

**The aims for a certification and inspection regime for buildings are, indeed, laudable and would go a long way to improving the workability of the current legislation, and focusing owners' awareness on their responsibilities. A targeted inspection regime would create a framework that would encourage owners to undertake regular preventative maintenance, thus preventing buildings from deteriorating to the stage where the fabric of the building is at risk in the first instance.**

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#### Question 14

##### **Are there any quality issues that arise from these proposals?**

1. As regards equality issues these of course will always exist as they do in all aspects of the work carried out by local authorities and vigilance would be required if the MSP's proposals were to be enacted to ensure that equality rights are not infringed.
2. The proposals themselves would not appear to give rise to equality issues, only the manner in which they would be enforced in any given situation.
  - Local Authorities are treating privately owned properties in the same way as Local Authority owned buildings when dealing with dangerous buildings – primarily because they have a statutory duty to act.
  - However, the subjective nature of determining a building defect without further definition or guidance on what constitutes a defect, means that Local Authorities would require to ensure that public buildings, particularly Local Authority owned buildings are treated in the same manner as privately owned buildings when enforcing defective building notices. It would be difficult for a Local Authority to justify enforcement action on private owners if the Local Authority also owned buildings with similar types of defects.

**In essence, notwithstanding the above comments, as the proposals are directed at buildings and not individuals, we do not consider that any equality issues arise.**

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