

**THE BUILDING REPAIRS (SCOTLAND) BILL CONSULTATION
ARGYLL & BUTE COUNCIL**

RESPONSE TO CONSULTATION QUESTIONS

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

With regard to dangerous buildings, the main problem is the recovery of costs for work legally organised by a local authority, when the owner does not carry out the work required. With no charging orders available the debt has to be recovered by civil means which is expensive, time consuming and in a lot of cases unsuccessful. When these debts cannot be recovered they are eventually written off against building standards revenue budgets. Further the identification of owners can be difficult.

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.

Argyll & Bute Council has never issued a defective building notice under Section 28 of the Act, due mainly to the lack of a suitable budget to carry out the works if the owner does not co-operate.

Generally there are a number of pieces of legislation dealing with dangerous/defective buildings, which can cause confusion.

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

Argyll & Bute Building Standards would generally support 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.

The introduction of clear procedures to be followed in the event of a Local Authority being unable to trace a property owner would be useful

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.

Streamlining of the various pieces of legislation would also be useful.

(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 current position, with owners having to be dealt with simply as civil debtors to the Council is not ideal, and does not take account of owners, who abscond without paying, or owners who cannot be traced or owners who simply cannot afford to pay the account. Being able to place a charging order on the building or site would be of great assistance.

The use of charging orders could encourage local authorities to be more proactive in dealing with defective buildings, which would have the added benefit of reducing risk to the public.

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

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.

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

If they are in financially difficult circumstances then payment to the Council can be delayed until the sale of a building or site.

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

There would be a lack of closure on any outstanding debt, and the subsequent sale of any such property could be affected.

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

There does not appear to be any significant benefit in changing the notice period. Section 28 (12) of the Building (Scotland) Act 2003 already provides Local Authorities with the power to waive or relax any requirement of the notice or substitute a later date for any date specified for commencement or completion.

Delaying timescales etc in the manner suggested could ultimately result in further deterioration to property which could result in a structure becoming dangerous.

(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?

An increase to 12 weeks should allow sufficient time for owners to carry out the necessary works, provided that they agree to co-operate jointly in a necessary repair scheme, however the existing legislation provides flexibility in the timescale set for 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.

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

The problem of resources will remain, particularly for defective buildings. Advantages would be that procedures could be simplified, and local authorities would have greater comfort that costs could be successfully recovered.

It could be argued though 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.

(10) What do you see as the advantages and disadvantages of an automatic equal shares provision for local authorities in cost recovery work carried out by them on dangerous and defective buildings?

The advantages of an automatic equal shares provision are simplicity, and the fact that the process could be speeded up.

One disadvantage is that the use of a simple “equal share” may lead to legal challenges if the costs proportioned from the Title Deeds are less. The conflict between Titles and a simple apportionment could render this unworkable.

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

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. It is difficult to see where the resources to deal with a certification and inspection regime could be found from existing budgets.

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

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.

It is also difficult to see where the resources to deal with a certification and inspection scheme could be found from existing budgets

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

Presumably enforcement would fall on local authorities, which would be an additional burden on already hard pressed Building Standards services.

If proactive inspection regimes and enforcement policies by Local Authorities are what the Minister envisages this will only be available if suitable resources are made available. Local Authorities will continue to struggle to resource enforcement activities otherwise.

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

No