

The Building Repairs (Scotland) Bill Consultation

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

- Lack of knowledge by owners relating to building ownership and responsibilities and the necessity to invest in their assets to assist in sustaining property values and condition.
- Recovery of monies – often irrecoverable or costly in court action
- Establishing ownership
- Share apportionment and responsibility
- Properties where no factoring arrangements are in place
- Political and community expectations linked to limited resources (both financial and staff).
- Rural and urban environments pose different problems in terms of defective and dangerous situations e.g. deprived v affluent
- The recent move away from the Grant Scheme to the Scheme of Assistance may lead to an escalation of problems until such times as owners accept their responsibilities.
- Current financial position leading to lower Scottish Government funding may contribute.

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

- Clearer routes to establish ownership details
- Scope for Notice to be affixed to the building at serving of documents as per previous legislation
- Mandatory inspections during verification of building of warrants to improve general building compliance
- Perhaps introduction of a policy emphasising upon the owners of defective or dangerous properties their responsibility for conducting repairs.

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?

- Simpler and direct process
- Greater degree of certainty in terms of recovery of costs
- More efficient and cost effective process
- More evident and stronger power of financial recovery may encourage greater responsibility

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

- It creates an unrealistic expectation in terms of what can be delivered i.e. whilst Charging Orders assist recovery they do not generate resources initially required to actually do the work. Therefore must be recognised that introducing Charging Orders will not directly allow more monitoring/remedial works to be undertaken.
- Local authorities will still have to 'foot the bill' in the first instance.

- While charging orders may assist debt recovery, the question regarding resourcing enforcement relative to defective/dangerous buildings remains
- Charging orders may have an impact on the conveyancing process e.g. adding additional complications to the sale of properties
- In some instances costs may still never be recovered. Firstly, a charging order does not guarantee recovery of money owed. Due to the fact that a charging order is ranked with other securities if the property has a standard security attached, the Local Authority charging order will be ranked below that or any other securities that the property is burdened with prior to the Local Authority charging order is attached.
Secondly, in the current market, where it is common for properties to be sold below market value, there is a risk that there will not be enough capital to repay the debt.
Thirdly, irrespective of whether a Local Authority is the only creditor or one of many creditors with a charging order burdening the property, the Local Authority must wait for the individual to sell the property for costs to be recovered. This could take a number of years and resultantly costs will not be recovered immediately. Again, in the current economic climate this is not an advantageous position for Local Authorities considering current budgetary constraints. Finally, all cases can be appealed by the owner and as such the proposal does not eliminate the possibility that Local Authorities may still be involved in litigation as the individual can appeal to an Ombudsman or Sheriff. Such an appeal could incur court costs in addition to costs for the repair works undertaken by the Local Authority.
- There is no option to reapply a charging order once the 30 year period expires. In some cases ownership extends longer than this period of time and means of recovery is lost
- Negative equity may be an issue e.g. where a debt remains live for many years and property values decline
- Where council instructs works no VAT can be charged to owners. Owners may decide not arrange works themselves to save costs - which based on the current VAT rate of 20% is a significant saving to an owner. Propose that interest be charged on all Charging orders at least 5% above the VAT rate at the time of works. Alternatively amend relevant legislation to ensure that no financial benefit is gained by an owner who fails to honour their repair obligations and leaves the council to organise works to a private property
- Owners should be obliged to discharge a charging order at sale or transfer to ensure avoidance of payment, for example as has occurred when a title is transferred between family members or between associated companies.
- A charging order can currently only be applied where a debt is outstanding. In some cases there is a time interval between the statutory notice being removed (following completion of works) and final costs apportioned and invoiced. During this time therefore no note of notice or works is outstanding on the title.

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

- Owners not liable to pay for works until property changes hands
- Owners may use the system as a long term loan/equity saving scheme and are not required to prove that they cannot clear the debt prior to the charge being placed on the title

- The charge placed on the title is based on the cost of works ex VAT
- Helpful where an owner has no access to financial resources
- Owners can clear the charge by instalments rather than clearing debt at point of sale
- no immediate financial implications for the owner
- Allows works on private property without initially costing the owners any expense

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

- Potentially over zealous use by Authorities
- Issues may arise if notice is served requiring payment by instalments and an owner is not in a position to repay on this basis.
- The owner of the defective or dangerous property will have their property burdened with a charge
- Private owners will loose out on the equity built up on their property when the property is sold.

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

- More time may result in the loss of perceived sense of urgency
- Owners will have more time to prepare a repair scheme (benefit)
- The longer works delayed, further disrepair and increased costs may result
- Would suggest that rather than extend timescale that extension to minimum period be granted if evidence that owners are actively progressing works
- It is likely that in most cases other than emergencies that the Council will have made contact with the affected owners who should therefore be aware that works are required. It could be considered therefore that willing owners should be progressing accordingly and it may therefore not be necessary for the timescales to be extended.
- Do not feel that the timescales need changing as the notices are to deal with made safe situation and not long term maintenance issues.
- The period of 21 days to complete the work after it has started is a minimum period. Local Authorities will always look at a period of time which is fair and realistic and takes into account the level and nature of the works to be carried out. No benefit would be gained from changing an already flexible period.

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 more time allowed for owners to prepare a scheme for repairs although an extension where evidence of progress (as highlighted above) should suffice
- It is felt the problem is not always due to timescales but actually getting owners to proceed with works.
- In some cases 12 weeks would be adequate, however, where works were of a less serious nature, a shorter period of time could be specified.

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

- The issue of adequate resourcing remains e.g. current budget pressures
- If Building Standards verification work is lost to the private sector the skills and expertise of staff and the income necessary to support enforcement activity may be lost
- Building stock may be improved and potential dangers removed dependant on resources and political will
- Provides greater security of debt recovery
- Where owners of defective or dangerous buildings fail to undertake the required works, the burden of action is still very much with the Local Authority and the suggested debt recovery procedures are by no way fail-safe.
- In terms of discouraging the owners from disregarding the defective or dangerous buildings notice, there is no particularly pressing change.

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?

- Owners may challenge the position being adopted by the Local Authority, albeit if the position is clear in the legislation, there may be no argument
- Main disadvantage would come from owners who challenged the method of calculation on an equal share basis, which placed them at a disadvantage, when their title deeds specified a different apportionment of costs.
- Easier for LA to administer Advantage to Council for ease in issuing invoices, however would require to consider impact of other legislation e.g. Title Conditions (Scotland) Act, Tenements (Scotland) Act etc. Any provisions would also have to consider if the split is between those in common ownership or benefiting/using the element subject of the notice.
- By apportioning costs to all owners of a shared ownership property equally the Local Authority is removed from any litigation between the parties for recovery of costs thereby avoiding costly court action and as in the case of Edinburgh, would allow the Authority to recover costs without concern as to the proportions of ownership in the tenement.

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

- Resourcing and enforcement of Inspection and Certification will be labour intensive
- May not receive buy in from owners into scheme, this may result in increased enforcement of the certification scheme rather than enhanced enforcement of defective and dangerous buildings
- Pressures on Building Standards Service with regards inspection of properties
- Income may be reduced if building warrant verification inspection work is lost to the private sector ie. Impact on resourcing of staff and financial
- Building stock may be improved and potential dangers removed
- For common properties, this type of inspection should be carried out by factors. May be beneficial to review options for Building Reserve Fund to ensure money is available for future works.

- As a result of the severe financial constraints affecting Local Government finance at this time there are concerns about funding to allow Local Authorities to monitor, administer and enforce such a scheme. Staffing levels in the Public Sector are undergoing major reductions at present with this trend expected to continue for the foreseeable future. All Local Authorities are struggling to meet existing service commitments and demands.

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

- LA may be able to recover costs in the longer term more easily
- The question of sourcing the additional resources necessary to make a difference remains to be answered however fully support the proposal to use a Charging Order for debt recovery
- It may be reasonable for public money to be used to make safe and inevitably lost through lack of recovery but do not think it should go beyond this. The proposals make assumptions that the property is worth saving or will have a value greater than or equivalent to the costs of works.

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

- These powers should remain with the Local Authorities to enable problems to be tackled in line with other priorities and ensure consistency
- In order for the proposals to be effective, all other legislation that might be used prior to or in conjunction with defective building repairs also requires to be reviewed to ensure effective recovery of all associated costs e.g., where a Nuisance Order has been served under section 80 of the Environmental Protection Act 1990 to enforce a clear out to allow further investigations to establish defective and or dangerous building classification.

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

- Unaware of significant issues however owners may place greater pressure on councils to take action
- Councils may have to justify any prioritisation of notice serving in terms of available funding, extent of disrepair, impact on the amenity of an area etc therefore although not immediately apparent, issues around equality could arise.