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**Renfrewshire
Council**

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Date: 25th February 2011

The Scottish Parliament
Room M1.05
Holyrood
Edinburgh
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Dear Mr Stewart,

Proposal for a Members Bill in the Scottish Parliament

I refer to your consultation paper on the Building Repairs (Scotland) Bill and the proposed provisions therein regarding changes to the current dangerous and defective buildings legislation. I would respond to the consultation questions as follows;

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

Ineffective cost recovery procedures.

There is no satisfactory legal mechanism which requires building owners to conduct ongoing maintenance to prevent their buildings from falling in to a state of disrepair.

The current definition of a defective building remains open to broad interpretation.

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

A reintroduction of charging orders similar to the provisions contained within the Building (Scotland) Act 1959 would allow local authorities to carry out work to dangerous and defective buildings with the confidence that incurred costs could eventually be recovered.

Any change to the legislation must place a greater emphasis on the responsibilities of building owners to act and prevent their buildings from falling into a state of disrepair.

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?**

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Where public money has been spent on private buildings, the cost recovery mechanism should be efficient and fair. At present, local authorities face difficulties when pursuing building owners for costs incurred in carrying out works to dangerous buildings. Issues persist surrounding tracing and then locating building owners, costs are often disputed and in multi ownership buildings, they can be complex to calculate. Non-payment results in formal court proceeding which adds a further financial burden to a local authority. Charging orders would simplify this process and ensure a more equitable cost recovery arrangement than at present as the debt is registered against the property and, in most cases, can be recovered

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

We see no disadvantages to charging orders with respect to dangerous buildings.

However, if the definition of defective buildings remains unchanged and there continues to be no legal obligation placed on local authorities to act upon defective buildings the status quo will remain, regardless of whether or not charging orders are reintroduced. It is also debatable whether or not the burden of rectify building defects should be placed upon local authorities. We believe this responsibility should remain firmly with the building owner and any subsequent change to the legislation should clarify this responsibility.

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

No comment.

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

No comment.

7. **What would be the benefits or disadvantages of changing the notice period in relation to defective buildings legislation?**

We do not believe that there are significant benefits in changing the current notice period for defective buildings. The minimum notice period is currently 28 days, 7 days to commence the work and 21 days to complete the work. A local authority has discretion and can specify different commencement and completion dates for different work and can extend the period of the notice if necessary. Therefore, we are of the opinion that the current provisions are satisfactory and we see limited value in altering the current notice period.

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8. **Do you think this would allow adequate time for owners to carry out repairs to their properties and please give reasons for your response?**
Refer to question 7.
9. **What do you see as advantages or disadvantages of the proposal?**
The proposal requires local authorities to adopt a more prominent role than at present with defective and dangerous buildings. We note that the proposals regarding dangerous and defective buildings remain broadly similar to those at present, however, we remain unconvinced that local authorities require to be more pro-active in repairing defective buildings. Any shift towards a mandatory requirement for local authorities to repair a defective building if an owner were to default upon a notice, should be regarded with caution. We believe that local authorities should mandatory responsibility for public safety in respect to dangerous building incidents only.
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?**
An equal shares provision would ease local authority cost recovery procedures. This is an effective and simple solution for common property repairs which could result in fewer disputes between building owners and local authorities regarding the recharging of enforcement costs.
11. **What do you see as the advantages and disadvantages of a certification and inspection regime for buildings?**
We see merit in the creation of a scheme which requires building owners to take greater responsibility for the ongoing maintenance and upkeep of their buildings.
- The proposal for a certificate of building repair scheme could promote a safer built environment within Scotland. However, it is questionable whether all buildings should fall under the auspices of a "certificate of building repair" and we would suggest that the proposal apply to the buildings that present the greatest risks. Typically, it is older buildings which are more likely to fall into a state of disrepair and a buildings age would seem to be a suitable determinant in deciding whether or not a certificate of building repair would be required.
- The professional qualifications/competence of the persons inspecting any building for a certificate of building repair must be considered as a vital part of the robustness of the scheme.

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The requirement for local authorities to administer the scheme will have a considerable impact on current resources as the sheer number of buildings likely to be involved in a scheme of certificate of building repair could overwhelm local authorities if under resourced.

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

The proposals have clear financial implications for local authorities if enacted.

A likely outcome of the broadening of local authority involvement with defective buildings is that more public money will be spent on repairing private buildings. Whilst the proposal addresses cost recovery issues, a local authority is still required to provide the funds at the outset should an owner default on the repairs required by a defective buildings notice. This is a cost which local authorities do not have at present as they are not legally obliged to conduct any defective building work.

The creation of a certificate of building repair scheme would require to be properly resourced, not only in terms of staff, but also in the manner in which the scheme is recorded, operated and enforced.

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

No.

14. **Are there any equality issues with the proposals?**

No.

We trust the above comments will be duly considered and will assist in the formation and content of the proposed bill.

Yours sincerely,



✶ Mr B. Darracott
Director of Planning & Transport