

# **KEEPING SCOTLAND SAFE**



**The Building Repairs  
(Scotland) Bill Consultation**

**David Stewart MSP**

# The Building Repairs (Scotland) Bill Consultation

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## Contents

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Summary of bill proposals	Pg. 2
Introduction	Pg. 3
The current situation	Pg. 5
Current legislation	Pg. 7
Problems with enforcement and cost recovery	Pg. 10
Charging Orders	Pg. 12
Protection for owners	Pg. 14
My proposal	Pg. 16
Other considerations for consultation	Pg. 17
Financial and enforcement implications	Pg. 19
Conclusion	Pg. 20
Full list of consultation questions	Pg. 22

## Summary of Bill Proposals

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- Extend the circumstances in which an authority can use charging orders to recover costs where it has carried out repair work to dangerous and defective buildings owned by others.
- Increase the period available to homeowners to undertake repairs in relation to defective buildings from 28 days to 12 weeks to enable adequate time for owners to carry out repairs.

## Summary of additional related issues considered in the consultation

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- In the case of shared buildings, automatically apportion responsibility among owners for repairs in equal shares.
- A certification and regular inspection requirement for properties.

# Introduction

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Scotland contains some of the finest and oldest buildings anywhere in the world. From the great cities of Edinburgh, Aberdeen, Dundee and Glasgow to the villages of the Highlands, Scotland is fortunate to have such a variety in its built environment.

However this variety and age of our buildings brings its own unique challenges. As the sad case of Christine Foster in 2000<sup>1</sup> made clear there must be vigilance to detect any sign of defective and dangerous buildings ensuring remedial work is undertaken before public safety is compromised.

The Buildings (Scotland) Act 2003 grants substantial powers to Local Authorities, particularly if a building is considered to be dangerous. However in practice it is clear that the enforcement regime does not work well, with a lack of proactive action taken on defective buildings, a substantial backlog of repairs needing completion and substantial losses for Local Authorities in unrecovered debts.

There are a number of barriers to Local Authorities ensuring that remedial work is carried out on defective buildings to prevent them reaching the stage where they would be considered dangerous to the public. These barriers are primarily due to the legal and financial processes involved in recovery of costs<sup>2</sup> and it is these barriers that this Bill would seek to address. It is clear from the examples that follow in this document, from across Scotland, that the current system is not effective and that there is a clear need for change.

The consultation document proposes one primary change to cost recovery legislation whilst consulting more widely on other possibilities to address related areas. The change proposed would be the reintroduction of charging orders as a means of cost recovery for both dangerous and defective building notices. Additionally there would be a change in the timescale requirement for owners to carry out repairs upon defective buildings to ensure that there is adequate time for owners to make arrangements prior to the authority carrying out such work.

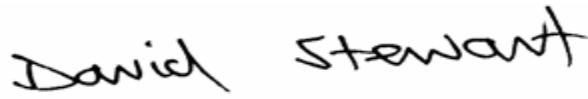
The aim of the changes proposed is to ensure that there will be an effective enforcement regime in place to allow local authorities to carry out their duties in a simplified and more cost effective way. This would enable local authorities ultimately to promote public safety whilst at the same time protecting Scotland's buildings for future generations.

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<sup>1</sup> Christine Foster was an Australian student who was fatally injured by falling masonry whilst working as a waitress at a bar in the West End of Edinburgh. The case was subject to a Fatal Accident Inquiry in 2002. (<http://www.scotcourts.gov.uk/opinions/FAI%20Foster.html>).

<sup>2</sup> In Scotland only 6 out of 32 Local Authorities have served formal Defective Building Notices. In cases where notices have been served there has only been a 48% success rate of cost recovery.

I hope you will be able to respond to this consultation (details can be found on Pg. 20) and that you will be able to pass on this document to any person or organisations who may be interested in this subject.

A handwritten signature in black ink that reads "David Stewart". The signature is written in a cursive, slightly informal style.

David Stewart MSP, Highlands & Islands

## The Current Situation

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The enforcement regime dealing with dangerous and defective buildings does not work well. This can be seen by the substantial backlog of repairs needing to be completed for defective buildings and the considerable outstanding costs to local authorities in unrecovered debts for repairs they have carried out to both dangerous and defective buildings. It is also clear that across Scotland there is a lack of proactive work being undertaken by local authorities in dealing with defective buildings prior to them reaching the stage where they would be considered dangerous. This lack of action in turn leads to the current situation where there are many unsightly and defective buildings that are left in states of disrepair and ultimately could become dangerous unless action is taken.

### Backlog of work

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- **In Edinburgh alone there is an estimated £1.2 billion backlog of repairs that are needed to address defective buildings.**

Across Scotland there is a considerable backlog of repair work needing to be undertaken on defective buildings. In Edinburgh, where a more proactive building regime exists (due to unique legislation), this backlog is estimated to be around £1.2 billion<sup>3</sup>. In other local authorities accurate estimates are difficult to obtain as there is not a regular or proactive approach to assessment of defective buildings. However across Scotland this backlog could be expected to be worth considerably more.

### Cost to Local Authorities (Outstanding Debts)

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- **There has only been a 48% success rate on cost recovery of Section 28 defective building notices.**

There is a substantial cost to local authorities in the current system in unrecovered debts for work carried out for both dangerous and defective buildings. In the case of defective buildings, there has only been a 48% success rate in recovering costs from work carried out related to defective building notices.<sup>4</sup> In the case of dangerous buildings, local authorities are under a statutory obligation to make safe a building; however, this does not guarantee that costs will be recovered. In Scotland there are estimated to be £1.3 million in unrecovered debts from owners of dangerous and defective buildings. In practice this means that public money is often used to the benefit of private owners when the obligation is on the owners to ensure their

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<sup>3</sup> Scottish Association of Building Standards Managers (SABSM) Presentation to Scottish Parliament Cross Party Group for Town and City Centre Development. Pg.20 ([www.scotborders.gov.uk/pdf/31950.pdf](http://www.scotborders.gov.uk/pdf/31950.pdf))

<sup>4</sup> SABSM Presentation Pg. 15 ([www.scotborders.gov.uk/pdf/31950.pdf](http://www.scotborders.gov.uk/pdf/31950.pdf))

property remains in a reasonable state of repair. This arises due to the difficulties in recovering the costs that have been incurred by local authorities from the owners of the properties concerned.

### Lack of Proactive Action to deal with defective buildings

- **Since the Building (Scotland) Act 2003<sup>5</sup> came into force only 6 out of 32 Local Authorities have served a Section 28 Defective Building notice.**

As there is no legal obligation on local authorities to make good defective buildings, the poor success rate in cost recovery means that there is a disincentive for local authorities to issue defective building notices; since the Building (Scotland) Act 2003 came into force only six out of thirty-two local authorities have issued a defective building notice.<sup>6</sup>

### Unightly buildings that have the potential to become dangerous

Taken together – the large backlog of repairs, the difficulties for local authorities in effectively ensuring that work is carried out and costs are recovered for dangerous and defective buildings, and the resulting lack of a proactive approach from local authorities – the accumulation leads to the current situation continuing. Unless action is taken, numbers of dangerous building incidents and costs to local authorities (and ultimately the taxpayer) are likely to increase. What I would like to propose is a system that enables local authorities to proactively protect the built environment whilst respecting the rights and obligations of owners in carrying out repairs to their property.

### Consultation Question

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

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<sup>5</sup> [http://www.opsi.gov.uk/legislation/scotland/acts2003/asp\\_20030008\\_en\\_1](http://www.opsi.gov.uk/legislation/scotland/acts2003/asp_20030008_en_1)

<sup>6</sup> SABSM Presentation Pg. 15 ([www.scotborders.gov.uk/pdf/31950.pdf](http://www.scotborders.gov.uk/pdf/31950.pdf))

# Current Legislation

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## Buildings (Scotland) Act 2003<sup>7</sup>

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Local authority powers and responsibilities in relation to dangerous buildings and defective buildings are primarily covered in the **Buildings (Scotland) Act 2003**. There are three other pieces of legislation relevant to the issue of dangerous and defective buildings and considered in this consultation; these are the Civic Government (Scotland) Act 1982, the Housing (Scotland) Act 1987 and the City of Edinburgh District Council Order Confirmation Act 1991.

## Buildings (Scotland) Act 2003 (BSA)

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In relation to dangerous and defective buildings, the key provisions of the BSA are:

### ➤ Dangerous buildings (Part 4, Sections 29 and 30)

- Councils can serve dangerous building notices requiring owners to make repairs.
- Where necessary councils can carry out these repairs themselves and recover costs (sub-section 3) through procedures for pursuing civil debt.
- The Sheriff makes the final decision on aspects of liability and recovery in the event of disputes over apportionment between owners.

### ➤ Defective buildings (Part 4, Section 28)

- Councils can serve defective building notices requiring owners to commence repairs within 7 days and complete the repairs within a further 21 days.
- Councils can carry out these repairs themselves and recover costs (sub-section 10) through procedures for pursuing civil debt.
- The Sheriff makes the final decision on aspects of liability and recovery in the event of disputes over apportionment between owners.

This legislation offers powers to local authorities in dealing with dangerous and defective buildings. This is the case particularly with the emergency provisions in place when a building is

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<sup>7</sup> [http://www.opsi.gov.uk/legislation/scotland/acts2003/asp\\_20030008\\_en\\_1](http://www.opsi.gov.uk/legislation/scotland/acts2003/asp_20030008_en_1)

acknowledged as being at risk of causing imminent danger. In such a case a local authority has a legal obligation to make the building safe.

## Civic Government (Scotland) Act 1982 (CGA)<sup>8</sup>

Section 87 of the Civic Government (Scotland) Act 1982 (CGA) includes local authority powers in relation to buildings in need of repair. Where the CGA differs from the BSA is in the cost recovery mechanism and the ability of local authorities to place a 'charging order' upon the property as the means of cost recovery. A charging order is placed on property rather than an individual ensuring cost recovery at a future sale of property if not before. Section 108 entitles a local authority to recover any expenses incurred by it under section 87(3) by way of a charging order. Section 87(3) provides that a local authority may repair a building without notice where it appears to be necessary in the interests of health or safety or to prevent damage to any property.

### ➤ **Section 108 – recovery of expenses incurred under section 87 by charging order**

(1)Where, under—

(a) section 87(3) of this Act; or

(b) section 99(4) thereof (to the extent that it relates to failure to rectify a defect specified in a notice served under section 87(1) thereof)

a local authority are entitled to recover any expenses, they may make in favour of themselves an order providing and declaring that the land, building or premises is thereby charged and burdened with an annuity to pay the amount of the expenses.

## Housing (Scotland) Act 1987

Although the Housing (Scotland) Act 2006 introduced 'repayment charges', the guidance produced by the Scottish Government states "Local authorities should continue to issue charging orders under Schedule 9 of the Housing (Scotland) Act 1987 to recover costs where it has enforced demolition or closing orders under the Act."<sup>9</sup>

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<sup>8</sup> <http://www.legislation.gov.uk/ukpga/1982/45>

<sup>9</sup> Housing (Scotland) Act 2006, Scottish Government Advisory Guidance, Annex G  
<http://www.scotland.gov.uk/Resource/Doc/265425/0079492.pdf>



## City of Edinburgh District Council Order Confirmation Act 1991<sup>10</sup>

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The City of Edinburgh has its own unique legislation in relation to dangerous and defective buildings. The main difference from the BSA is that where there is shared ownership of a property (that is, in a tenement building), the terms of the City of Edinburgh District Council Order Confirmation Act (the Edinburgh Act) requires the authority to recover costs on an 'equal share basis' regardless of any conditions to the contrary that might be contained in Deeds of Title or private contracts.

Under the powers of the Edinburgh Act the City of Edinburgh Council currently issues more building notices than all of the other Scottish local authorities combined amounting to an annual output of some 2800 statutory notices in response to 36,000 queries from owners. Whilst there is still a substantial backlog of work in each year there are also £32 million of repairs carried out to buildings in Edinburgh annually.<sup>11</sup>

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<sup>10</sup> [http://www.oqps.gov.uk/legislation/uk/acts/localact91/ukla\\_19910019\\_en\\_1](http://www.oqps.gov.uk/legislation/uk/acts/localact91/ukla_19910019_en_1)

<sup>11</sup> SABSM Presentation Pg. 20 ([www.scotborders.gov.uk/pdf/31950.pdf](http://www.scotborders.gov.uk/pdf/31950.pdf))

# Problems with Enforcement and Cost Recovery

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It appears that, whilst the Buildings (Scotland) Act 2003 gives local authorities significant powers in theory to deal with dangerous and defective buildings, there is a problem with the enforcement of the legislation in practice.

## Dangerous Buildings

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In the case of dangerous buildings there is a legal obligation on local authorities to act upon buildings that pose a danger to public safety. The primary problem in relation to dangerous buildings is therefore not one of lack of action but of cost recovery for the action that local authorities are legally bound to take. The case of a recent fire damaged nightclub in South Ayrshire is an example of this:

*“South Ayrshire had a night club fire which extensively damaged the Club and some street level commercial premises. The Council had to step in and do some works to make the building safe. Four owners, four insurance companies, four loss adjusters, and little chance of agreement on anything. The owner responsible for the largest share of the costs, the night club owner, did not pay, and simply let his company go bust (he has subsequently restarted again under another name), leaving Building Standards over £10,000 out of pocket. Legal advice is that there is no point in taking the bankrupt company to court as we would not recover our costs.”<sup>12</sup>*

Similarly in Fife there is another example of the difficulties in local authorities recovering costs:

*“An example we have is under dangerous buildings (because we had to step in), £300K costs to demolish (tight town centre site, precarious building heavily shored – risk of collapse into street), 3 owners, 4 shares, one owner sequestered, one insured, another businessman with 2 shares, no buildings insurance and with absolutely no intention to pay. All owners identified so we can only use normal debt recovery.*

*An example like that makes it almost certain we will never use defective building legislation at present to incur optional debts...”<sup>13</sup>*

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<sup>12</sup> SABSM Charging Order Paper 2010 (available from SABSM).

<sup>13</sup> SABSM Charging Order Paper 2010 (available from SABSM).

## Defective Buildings

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In the case of defective buildings there is the added problem of a lack of action in repairing defects on buildings, prior to them becoming dangerous. There is no legal obligation for local authorities to act upon defective buildings and so the problems with cost recovery act as a deterrent to local authorities using powers in relation to defective buildings under the Buildings (Scotland) 2003 Act. This can be seen by the lack of defective building notices issued since the introduction of the Act<sup>14</sup> and by the Fife example shown above.

## Cost Recovery

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In both cases the common problem is cost recovery for local authorities and therefore there is a need for a change in the legislation to ensure that there are clear and effective cost recovery mechanisms in place. The following pages outline some of the legislation covering cost recovery. There is confusion about what powers local authorities have at their disposal – this should be clear and unambiguous.

This consultation document proposes a system to enable charging orders to be used efficiently on both dangerous and defective buildings to enable local authorities to recover costs effectively.

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<sup>14</sup> SABSM Presentation Pg. 15 ([www.scotborders.gov.uk/pdf/31950.pdf](http://www.scotborders.gov.uk/pdf/31950.pdf))

# Charging Orders

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Charging orders are a cost recovery mechanism that place a 'charge' on a property. Local authorities have powers to use charging orders in certain circumstances under the Civic Government (Scotland) Act 1982 and the Housing (Scotland) Act 1987.

Charging Orders have a number of distinct advantages as a means of cost recovery when compared with the current arrangements of recovering costs as a civil debt. These are as follows:

## Charging Order

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- Charging order is placed upon property rather than individual ensuring cost recovery at a future sale of property if not before.
- In most cases a charging order has priority over other debts.
- Cost is significantly cheaper as local authorities can record the charge themselves at the Land Register. This typically costs less than £100.

## Civil Debt

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- Cost of tracing and pursuing individual.
- Joins the queue of all other creditors.
- Requires a court judgment so leads to significant extra cost – typically up to £5000 in legal expenses.<sup>15</sup>

## Advantages of charging orders for dangerous and defective buildings:

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Specifically with the problems identified with dangerous and defective buildings legislation there are a number of advantages to charging orders. My proposal is to extend the circumstances in which an authority can use charging orders to recover costs where it has carried out repair work to dangerous and defective buildings owned by others.

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<sup>15</sup> SABSM Presentation Pg. 8 ([www.scotborders.gov.uk/pdf/31950.pdf](http://www.scotborders.gov.uk/pdf/31950.pdf))

### The use of charging orders would:

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- Enable effective cost recovery for repairs to dangerous and defective buildings.
- Lead to local authorities having deterrent effect by being able to issue defective building notices.
- Enable local authorities to effectively issue defective notices as a last resort.
- Lead to backlog of repairs diminishing.
- Lead to a proactive system of dangerous and defective building enforcement.

### This would ultimately lead to:

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- Increased public safety
- A better protected built environment.

### *Consultation Questions*

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2. In your opinion, what changes should be made to current legislation to allow for a more effective system of identification and enforcement?
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?
4. What do you see as the disadvantages of charging orders?
5. What do you see as the benefits of charging orders to owners of dangerous and defective buildings?
6. What do you see as the disadvantages of charging orders to owners of dangerous and defective buildings?

## Protection for owners

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It is important that owners of properties are not unfairly affected by any revised charging order proposals and that the rights of owners are properly protected. This would be done in three ways:

- The Defective Building Notice 'notice period' would be increased to 12 weeks to ensure that owners would have adequate time to carry out repairs themselves before a charging order could be placed on the property.
- There would be a requirement upon local authorities to show that 'all reasonable steps' were taken to work with the owner prior to a charging order being issued. This would include local authorities keeping a written record of dealings with owners.
- In all cases owners may appeal. This may be to a review panel, to an Ombudsman or to a sheriff.

### Increasing the minimum Defective Building Notice 'notice period'

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At present a Defective Building Notice must specify (a) a date not less than 7 days after the date of service of the notice by which the owner must have begun the work required by the notice, and (b) a date not less than 21 days after the date specified under paragraph (a) by which the owner must have completed that work.<sup>16</sup> Whilst there is provision for extending these dates it is clear that this is a very short space of time for an owner to make provision for repairs to their building.

In introducing charging orders (with the likelihood of cost recovery in almost all circumstances) it would be paramount to ensure that owners were able to have sufficient time to attempt repairs themselves and it is important that there could be no impression of over-zealous local authorities taking unfair action upon owners. By increasing the notice period for owners to commence work to 12 weeks this would provide adequate protection and increased time for owners in dealing with the defects to their building.

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<sup>16</sup> BSA Section 28 [http://www.opsi.gov.uk/legislation/scotland/acts2003/asp\\_20030008\\_en\\_1](http://www.opsi.gov.uk/legislation/scotland/acts2003/asp_20030008_en_1)

## *Consultation Questions*

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

# My Proposal

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If these two changes were made I envisage that my proposal would be for an enforcement regime that would operate in the following way:

## Dangerous Buildings

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- A notice to be served on owners of dangerous buildings.
- The notice to specify the date by which work must be carried out.
- Action by the local authority if not taken by owners: repairs and notification of costs to owners.
- Charging order to be issued to recover costs and expenses incurred by the Local Authority.
- Appeal to an Ombudsman or Sheriff if owner not satisfied at an appropriate point.

## Defective Buildings

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- A notice to be served on owners of defective buildings.
- The notice to specify the date by which work must be carried out.
- The date specified would be no less than 12 weeks from the notice being issued.
- Action by the local authority if not taken by owners: repairs and notification of costs to owners.
- Charging order to be issued to recover costs and expenses incurred by the Local Authority.
- Appeal to an internal panel and Ombudsman or Sheriff at an appropriate point.

## Consultation Question

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



## Other considerations for consultation

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The other issues that I am consulting on are the apportionment of shared costs on an 'equal shares basis' and the possible introduction of a requirement for owners to submit to a regular certification and inspection regime of buildings. I am keen to hear views on these issues.

In addition to charging orders, two other measures may also be considered to help provide a more effective and robust regime in cost recovery and helping local authorities.

- Automatic apportionment of costs of repairs on an equal shares basis in the case of shared ownership;
- Introducing a requirement for building owners to submit to a regular certification and regular inspection regime of their property.

## Division of cost of repairs to common property by equal shares

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As outlined earlier, at present, in the case of shared ownership of tenement buildings, the provisions of the Edinburgh Act currently automatically apportion costs for repairs undertaken by the Council on an equal shares basis amongst the owners who are then liable to pay to the City Of Edinburgh Council. This power saves time and cost where complicated shared ownership exists. This specific apportionment can be challenged by owners who may take action against other owners to recover sums paid, or recovered from them (although this would not then involve the local authority).

This may be a provision that would be useful to other local authorities in the case of shared ownership.

## Consultation Question

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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?

## Certification and inspection requirement for properties

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It could be inferred that there is a lack of proactive action taken by local authorities in relation to defective buildings (see earlier section entitled "The current situation").

One option to rectify this may be to require owners to hold a 'certificate of building repair' stating that the property was not defective and in a good state of repair. This would need to be granted on a regular basis (perhaps every five or ten years) and would work as a form of 'property MOT'. The scheme would need to be administered by a local authority but checks not necessarily carried out by it.

## *Inspection Requirement*

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In addition to a certification scheme, Local Authorities could be granted the power to inspect properties on either a regular basis or to carry out spot checks to ensure that the certification scheme was robust.

## *Consultation Question*

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

# Financial and Enforcement Implications

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## Financial Implications

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A major advantage of these proposals would be that, with an effective cost recovery regime, Local Authorities could save money as they recover costs. The present system means that in the case of dangerous buildings, Local Authorities can fail to recover costs and in the case of defective buildings often do not act at all.<sup>17</sup>

## Enforcement

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Local Authorities would continue to enforce dangerous and defective building legislation. The proposals would allow for a more effective enforcement regime.

## Consultation Questions

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12. Do you have any comments on the financial implications of the proposals?
13. Do you have any comments on enforcement of the proposals?
14. Are there any equality issues that arise from these proposals?

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<sup>17</sup> SABSM Presentation Pg. 16-17 ([www.scotborders.gov.uk/pdf/31950.pdf](http://www.scotborders.gov.uk/pdf/31950.pdf))

## Conclusion

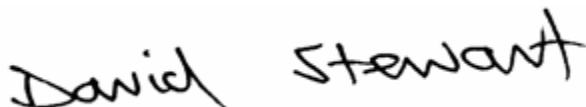
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This consultation document highlights ways in which legislation could be changed to help Local Authorities deal with defective buildings and prevent them from reaching a stage where they would be considered as dangerous to public safety. In so doing there would also be a positive impact to protecting Scotland's built heritage and in reducing financial burdens on Local Authorities in a time of reduced public expenditure.

There may be provisions and alternatives that we have not yet considered and invite all responses in good faith that we may be able to navigate through the current issues in Dangerous and Defective buildings legislation and its effective enforcement.

Please ensure that responses are received by my office **11<sup>th</sup> March 2011**.

I look forward to hearing your response to the Consultation questions that follow.

A handwritten signature in black ink that reads "David Stewart". The signature is written in a cursive, slightly slanted style.

David Stewart MSP

Consultations can be directed to the following address:

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For any enquiries please phone: 0131 348 6938

To help inform debate on the matters covered by this paper and in the interests of openness it is intended all the responses submitted on this consultation document will be made public. You should therefore be aware that by submitting this response you are indicating consent to the publication of all the material contained in your response. Unless you indicate otherwise this will include your name and address and any other biographical information you have provided about yourself. You should note that personal data referring to third parties included in the

response cannot be accepted without explicit written consent from the third party. This consent should be provided with your response.

I am not entitled to process your personal data by publication without your consent. If therefore you want parts of your response to remain confidential please indicate which parts are not for publication. Similarly, if you wish all of the contents of your response to be treated in confidence and not made public then please indicate so.

All responses will be included in any summary or statistical analysis. However, if you have asked for your response to be treated in confidence, I will not identify you individually in any summary or analysis.

You may also wish to note that your response may be analysed and summarised by the Non-Executive Bills Unit at the Scottish Parliament and therefore the information you have provided may be subject to requests made under the Freedom of Information (Scotland) Act 2002.

Additional copies of the paper or alternative formats can be requested using the contact details above and calls via Tynetalk are welcome. An on-line copy is available on the Scottish Parliament website [www.scottish.parliament.uk](http://www.scottish.parliament.uk).

# Full list of consultation questions

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

- Tracing owners of both vacant and tenanted properties.
- Some property owners are not aware of their responsibilities and the importance of building maintenance and repair and, in cases in which they are aware, difficulties in getting communal work carried out due to reluctance from other owners to accept, agree, arrange and finance the work required.
- Current budgetary issues facing Councils resulting in priorities lying elsewhere; money is not generally available for Councils to tap into to enable them to fund & carry out work in default of a notice, then waiting for this to be recovered at some unknown future date. Added to this are the legal and staff time/costs of debt recovery under the current system which relies on civil recovery measures.
- Communal responsibility for maintenance and repair of buildings 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

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

- The current system of identification works reasonably well. Experience in West Dunbartonshire is that we are always responsive to reports of dangerous buildings and generally attend reports of defective buildings. Following information gathering, discussion and the giving of advice to the reporter, there are instances in which some defective buildings are reported but not visited - as no further action is deemed necessary by the Council at that time.
- Provision of a national fund allowing Councils, who are carrying out work in default of the owner, to draw money from before work start to repair defective and dangerous buildings. Repayment back to the fund could be made either directly by the owner or by the discharge of a charging order at time of future sale.

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?

- More reliable opportunity for costs to be recovered than is currently the case. However Councils must still have the discretion on whether to carry out any work in default of a notice.

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

- Councils 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 Councils, even using charging orders,

can be many years after the time of placing of the charging order on the property. Councils would require to absorb this debt until such time as it was repaid.

- Owners may place a reliance on and have an expectation that Councils will use charging order powers to provide a way of funding repair and maintenance work, and thus further avoid their own responsibilities for doing so themselves.
- As a charging order could only be placed if the Council did the work, it does not solve the issue of owners taking responsibility for their property but cannot fund work e.g. an otherwise responsible owner, agrees that work requires to be carried out and simply cannot fund, will be forced to give up responsibility for the issue and to allow the Council to take over and remedy the situation.

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

- Ability to get work carried out now without the owner having to access funding at present time.
- Someone else (i.e. the Council) will arrange the work and take responsibility for rectifying the situation and any subsequent defects arising.
- Placing of a charging order could be a solution for some owners who are facing short term financial issues (including those who would not be suitable for normal financial lending criteria and those who cannot access any equity in the property), as a charging order would allow them to have the defect remedied now and pay sometime later.
- Defective buildings would be repaired and therefore avoid the building becoming uninhabitable/dangerous at a future date.

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

- Overall cost of rectifying the situation may be more if Council arranges work rather than the owner doing so.
- Owner may not agree that works are necessary and resent the process and aims of the Council.

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

Benefits

- Owners may have time be able to source a range contractors, possibly resulting in a reduction in the overall cost,
- Owners may feel that they have some breathing space allowing them to assess the situation and seek professional assistance in relation to any major repair work required.

Disadvantages

- longer period for defects to be repaired, owners can avoid the issue for longer in the hope that it will just go away
- The extent of the work required may increase over the longer period of the notice as a result of the cumulative effect of deterioration of various building elements involved.

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?

- In the majority of cases 12 weeks should be an adequate time to start work. However we would point out that the 7 days specified within the current legislation to start work and 21 days thereafter to complete the work are both minimum times. This provision is felt to be useful as it allows Councils to adjust these times as it deems necessary in relation to the particular circumstances of the case.

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

**Generally advantages and disadvantages are as provided above, however the following additional information may also be of use:**

Advantages

- May provide Councils with more confidence to carry out work in default of a notice in the knowledge that they will be able to recover its costs in doing so; albeit this recovery may be many years later.

Disadvantages

- Councils being forced to take action in cases of defective buildings regardless of nature of the defect and the cost of rectification (both minor and major). We would submit that discretion on whether to take action by serving a notice, and in addition if a notice was served further discretion on whether to carry out works in default of a notice must still remain a decision for the Council; as per the current position.
- Unless additional funding is made available for Councils for carrying out work in default of a notice, the system as proposed could be a financial burden on Councils at time of financial constraint.
- Owners would still be able to avoid taking responsibility for their properties, could sit back and watch others (Councils) arrange and do the work, with no need to source funding.
- Potential for misuse to remove unwanted buildings/problems.
- Potential for misuse by disgruntled tenants against landlords.

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

- Costs can be apportioned in a simple, straightforward way.

Disadvantages

- Potential for owners having a higher than equal share of the costs by way of legal title using the equal apportionment system to reduce their own immediate costs to the disadvantage of other minor share owners



- Usually there is already a legal document in form of the property title for apportionment of cost of communal works

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

##### Advantages

- Early identification of issues and chance to remedy before situation deteriorates into a defective or dangerous condition.
- Owner awareness raised on the importance of investing in their property by maintaining and repairing it.
- Creation of additional work area for building surveyors.
- Additional information available to potential purchasers - if all inspection reports were made available.

##### Disadvantages

- Scale and initial cost of setting up system, public awareness, logistical & staffing issues.
- Additional unnecessary burden on those owners who are responsible and do look after their properties, and have maintenance and repair schemes in place.
- Certification, like a vehicle MOT, is a snapshot in time – it would not deal with issues which come to light following the certification inspection, more so if the renewal period was 5 or 10 years.
- Cost of inspection for difficult to access properties, both in terms geographical location and property size, may be disproportionately high; e.g. remote premises where there is likely to be low public risk as a result of defective building (high inspection costs due to travel time & costs), high rise properties requiring wall and roof inspections where access is not readily available, inspection of large buildings such as hospitals and university campuses, (high inspection costs due to access equipment and time to inspect, record and report).
- Public reaction to perceived government intrusion into their private life.
- Penalty for not having a 'certificate of building repair' for a property? Careful consideration would be required in relation to this aspect, as it may be beneficial for an owner to take the penalty option rather than arrange inspection and/or carry out any works required; especially in cases of defective buildings requiring large sums of money to remedy.
- Resource costs for running and enforcement of system.

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

- We have commented on some of the financial implications of the proposals as part of the answers previously given, however we would take this opportunity to reiterate the point stated at Q4 above, that Councils would still require to access funds at present time in order to meet its costs. Repayment of these costs to Councils via charging orders can be many years later, with Councils requiring to absorb this until such time as repayment is made. Councils are under increasing budgetary pressures at present and

to be successful, additional funding would require to be allocated to underpin this scheme.

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

- What is a defective building? The lack of a definitive answer to this may result in varied, wide ranging opinions and interpretations throughout Scotland and thus varied application of enforcement measures.
- In relation to defective buildings, enforcement should remain at the discretion of Councils. The facility for Councils 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 Councils to serve notice and arrange work in default in the more serious cases.

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

- An initial screening for equalities issues did not highlight any equalities issues in relation to these proposals.