

Clerk to the Local Government and
Regeneration Committee
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Scottish Parliament
Edinburgh
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Please ask
for: Malcolm MacLeod
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Date: 31 January 2014

Dear Sir

Committee's Call for Evidence – Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill

I refer to the above and I am pleased to offer the following as the Highland Council's submission in response to the proposed Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill introduced by David Stewart MSP.

The Highland Council is fully supportive of the proposed Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill. The reasons for this view are set out below in response to the specific questions asked:

1. Local authorities are already required by the Act, as "the buildings authority" to employ the manpower that can demonstrate competency, qualification and the expertise to manage buildings under Sections 28, 29 and 30 of the Building (Scotland) Act 2003 therefore, monitoring and taking the appropriate action under the S28, 29 and 30 of the Act, to safeguard the public is an expenditure LAs already provide for. The added expense, in the event that a Charging Order is required will be very small when compared to the professional officer's/surveyor's time in dealing with what is a statutory obligation.

The main advantage of the proposed Bill, is that if charging orders are re-introduced into the Building (Scotland) Act 2003, this will permit local authorities (LAs) in Scotland, once again, to recover the costs incurred following commissioning works to dangerous and/or defective buildings under Sections 28, 29 or 30 of the Act, and where the owner cannot be found or where the owner refuses or is unable to pay the costs.

Another advantage with the proposed Bill is that LAs would be able take a more proactive approach when dealing with defective buildings meaning buildings will be inspected at an earlier stage and repairs instructed and carried out before the building fall into a state of disrepair resulting in the building being dangerous and unusable, resulting in the building being at risk of demolition or more costly to restore and bring back into use.

The responsibility for ensuring a building is maintained in a satisfactory and safe condition lies with the building owner and the Act is implicit on this. The threat of a charging order being raised and therefore a burden being placed on a building or property will ensure an owner cannot escape or ignore their liability.

By registering a charging order in the appropriate land register for a building or land where a building formerly stood will allow prospective purchasers to see the property history and that a third party (the local authority) has an outstanding debt against the property or land. This may be particularly useful where an owner cannot be found or possibly hasn't disclosed the financial burden.

The Highland Council is therefore not aware of any disadvantages of the proposed Bill

2. The lack of charging order powers is making the recovery of costs more difficult for LAs when dealing with incidents under the Building (Scotland) Act 2003. The charging order option was removed when the 2003 Act replaced the 1959 Act the reason given was because it was thought that the recovery of expenses by LAs could be accomplished by normal debt recovery methods. Unrecovered costs place a significant burden on the public purse.

The use of Defective Building Notices has not been widely used in Highland and of the 10 to 15 complaints received per annum regarding defects on buildings less than 5 notices were served this financial year. Charging orders would allow the LAs to take a more proactive approach when inspecting defective buildings and be more likely to instruct work to be carried out under Section 28 of the Act, safe in the knowledge that it will be recompensed.

It is not expected that charging orders will be used that often in Highland. The Highland Council responds to approximately 10 to 15 Defective Building complaints and 20 to 30 Dangerous Building incidents per year. Of this, on average, 13 dangerous building incidents result in the Council instructing work to be carried out on behalf of the owner to reinstate and/or make the building safe.

The best estimates stated in the Financial Memorandum (FM) supporting the Bill refer to additional costs to LAs being:

- Registering a charging order against a property in the Registers of Scotland (estimated at £50)
- Discharging a charging order (estimated at £50)
- The cost in administration to the LA of raising a Charging Order (estimated at £60)

The additional costs listed above amount to a very small percentage of the total costs lost to local authorities annually under the present legislative arrangement, when compared with the ability to place a Charging Order on a building.

This financial year the Highland Council has paid £14,478 in costs to contractors and professionals for 8 incidents where the Council instructed work to make buildings safe under dangerous buildings procedures. The best estimated cost in the FM of raising a

charging order and the administrative work related to this is £110. $8 \times £110 = £880$. This equates to 6% of the monies paid out by the Council under Sections 29 and 30 of the Act. These are costs that the Council has little hope of recovering without charging orders.

3. If charging orders are reintroduced the LA would be required to register a charging order in the appropriate land register. This public register will permit any interested party in the property or land to see that there is a history and that the LA has an interest in the property or land. This effectively places a burden on the property as well as the owner notwithstanding this person's whereabouts may not be known.
4. There are no equality issue arising from the proposed Bill that Highland Council is aware of.
5. The fixed period of 30 years for repayment proposed by the Bill is overly long in the opinion of Highland Council. With local government reorganisations occurring more often than this timeframe we would suggest a shorter repayment period, certainly no longer than 20 years.

Yours sincerely



Malcolm MacLeod
Head of Planning & Building Standards