

# **DEFECTIVE AND DANGEROUS BUILDINGS (RECOVERY OF EXPENSES) (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. This document relates to the Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill introduced in the Scottish Parliament on 30 October 2013. It has been prepared by the Non-Government Bills Unit on behalf of David Stewart, the member in charge of the Bill, to satisfy Rule 9.3.3A of the Parliament's Standing Orders. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 39–EN.

### **POLICY OBJECTIVES OF THE BILL**

2. The Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill (“the Bill”) amends the Building (Scotland) Act 2003 (“the 2003 Act”) to allow local authorities to make charging orders for recovery of expenses incurred where they have carried out work to defective or dangerous buildings under sections 28, 29 or 30 of the 2003 Act.

3. The aim of the Bill is to provide local authorities with an additional cost recovery method. The Bill—

- provides the means for expenses incurred by local authorities in the repair, securing or demolition of defective or dangerous buildings to be recovered by way of charging order;
- specifies recoverable expenses to include local authorities' works costs, registration and discharge fees for a charging order and administrative expenses incurred in connection with arranging the registration and discharge of a charging order, and interest;
- sets out the required contents of a charging order;
- provides for the registration, repayment (including early redemption), and discharge of charging orders; and
- provides for a charging order to be appealed in certain circumstances.

4. Currently when a local authority incurs repair costs having served either a defective building notice (under section 28 of the 2003 Act), a dangerous building notice (under section 30), or taken urgent action to deal with a dangerous building (under section 29), and has not been

able to recover these costs from the owners of those buildings, the local authority can pursue the debt through civil debt recovery procedures. However, local authorities can face difficulties in tracing owners, and pursuing owners through the courts can be costly. In some instances local authorities are having to write-off hundreds of thousands of pounds of debt.<sup>1</sup>

5. The Bill will provide local authorities with the new option of making a “charging order” in relation to a specified building, for example, where the owner cannot be traced, or there is no likelihood of the owner paying the outstanding sums, whether in consequence of being unwilling or unable to do so. Although potentially a longer-term measure, charging orders, in attaching to the property, will provide local authorities with some greater opportunity to make recovery of outstanding debt when the property is sold. It will also provide for annual instalments so that those who can pay but do not have the funds in the short-term to settle the full repair costs involved can pay over an extended period. The prospect of a charging order secured on their property should in addition encourage those who won’t settle the outstanding debt or enter into negotiation with the local authority to pay the outstanding amount or enter into negotiations with the local authority. A facility to redeem the outstanding amount early and the facility for an owner and local authority to negotiate a reduced amount also feeds into the overarching policies of increasing debt recovery rates and encouragement of early repayment.

6. The Bill could also have some wider effect. Currently local authorities do not utilise their defective building powers under section 28 of the 2003 Act to their full potential. There is a combination of reasons for this, although cost recovery is of primary concern. With more cost recovery powers at their disposal, local authorities may be prepared to be more proactive when tackling defective buildings, as these are potentially tomorrow’s dangerous buildings. Thus the Bill could have a preventative quality, improving public safety and helping to protect Scotland’s built environment.

## **BACKGROUND**

### **Charging Orders**

7. A charging order is a form of statutory charge which attaches to land and property, for example, in relation to the repayment of a loan, recovery of expenses incurred or grants made. Charging orders usually provide for the repayment of a capital sum, often by instalments. The charging order is registered in the Land Register or, where appropriate, the Register of Sasines (gradually being replaced by the Land Register).

8. In practice, under a charging order, a local authority would be able to charge a property with a sum, repayable by annual instalments over a fixed term, normally 30 years. This might be earlier where the owner is in a position to redeem by paying the local authority the full amount or another agreed amount. As with other fixed securities over property, a charge’s ranking will govern priority given to payment out of the proceeds of any sale. Typically, ranking is determined by date of registration, although some securities can be given prior ranking over others. Charging orders will require to be registered in the appropriate land register. Provision is

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<sup>1</sup>The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012, Experience in cost recovery, paras 4.3.8, 4.3.14 and 4.3.19. Available at: <http://www.scotland.gov.uk/Resource/0041/00412487.pdf>

made for charging orders to be discharged before the end of fixed term and in those circumstances a discharge would require to be similarly registered. On expiry of the 30-year term the charging order is extinguished, but any outstanding debt which remains can be pursued through the civil debt recovery process.

9. A number of Acts make use of charging orders and they can be found in the housing and building repair contexts<sup>2</sup>, and also other areas such as health and social care<sup>3</sup>. The precise scope of the power to make a charging order and the processes attached to it vary according to the specific statute concerned.

10. In this context, the Bill amends the 2003 Act to make charging orders available to local authorities as a means of recovering costs, to include works costs and any administrative costs (and interest accrued) incurred under sections 28, 29 or 30 of that Act. In addition, it provides for recovery of any costs resulting from implementing the charging order itself such as the fee for registering the charging order in the appropriate land register.

## **Legislative context**

### *Building (Scotland) Act 1959*

11. Prior to the current system of building standards provided for by the 2003 Act, the Building (Scotland) Act 1959 (“the 1959 Act”) dealt with the setting of building standards, compliance with and enforcement of those standards, and powers in relation to dangerous buildings.

12. Schedule 6 to the 1959 Act provided a framework for charging orders. Local authorities were empowered to make charging orders for the recovery of their expenses where they executed works under section 10 (to remedy contraventions of a building warrant or construction in the absence of a building warrant), 11 (to remedy non-conformity with building standards for certain purposes) or 13 (to deal with dangerous buildings). This entitled the local authority to burden the property with an annuity over a 30-year term, which had priority over existing and future burdens and incumbrances (with some minor exceptions).

13. East Dunbartonshire Council in its response to the Scottish Government’s consultation on the Community Empowerment and Renewal Bill<sup>4</sup> stated, “The Building (Scotland) Act 1959 included provisions allowing authorities to recover costs by way of a Charging Order registered against the property. These provisions were not included within the Building (Scotland) Act 2003 but would be a helpful addition to the means by which authorities can attempt to recover charges”<sup>5</sup>.

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<sup>2</sup> For example, the Housing (Scotland) Act 2006, section 172, (repayment charges) and the Historic Environment (Amendment) Scotland Act 2011, section 26, (liability of owner and successors for expenses of urgent works).

<sup>3</sup> Health and Social Services and Social Security Adjudications Act 1983, section 23, (arrear of contributions secured over interest in land in Scotland).

<sup>4</sup> A Consultation on the Proposed Community Empowerment and Renewal Bill. Available at: <http://www.scotland.gov.uk/Publications/2012/06/7786>

<sup>5</sup> East Dunbartonshire Council, Response 117, Non-Confidential Responses. Available at: <http://www.scotland.gov.uk/Publications/2013/01/5167/downloads>

14. North Ayrshire Council considered the lack of charging order powers in the 2003 Act “to have been an error and should be quickly addressed by reintroduction of the Charging Orders so that local authorities have recourse to redeeming costs that are spent on properties that fall into a Dangerous Condition Survey”<sup>6</sup>.

#### *Building (Scotland) Act 2003*

15. The 2003 Act (Schedule 6, paragraph 1) repealed the 1959 Act in its entirety and replaced it. The Explanatory Notes for the 2003 Act describe the Act as retaining the general framework of the 1959 Act while making changes to procedures for the building standards process to make it simpler, and to reflect existing practice.

16. The main provisions in the 2003 Act to which this Bill relates are sections 28, 29 and 30 of the 2003 Act, although it also amends section 47 of that Act with regard to extending appeals to charging orders. These are described below.

17. Section 28(10) of the 2003 Act makes provision for where a local authority carries out works further to a defective building notice. The local authority “may recover from the owner any expenses reasonably incurred by it in doing so”. Similar provision is made at section 29(2) and 29(3) where a local authority takes urgent action to deal with a dangerous building, and at section 30(4) where works are undertaken further to a dangerous building notice. The local authority may again recover any expenses reasonably incurred by it. Where expenses are not paid the local authority can pursue payment of the outstanding amount by means of established civil debt recovery processes and procedures set out in other legislation.

18. In respect of dangerous buildings, where a local authority has incurred expense but cannot find the owner to recover the costs, the local authority can use section 45 of the 2003 Act to seek authorisation from the Scottish Ministers to compulsorily purchase the building and/or its site.

19. Section 47(3) of the 2003 Act provides for an appeal to be made in relation to a range of decisions and notices which can be taken under the 2003 Act, including a defective or a dangerous building notice. A decision or notice is of no effect until the period allowed for an appeal has elapsed or the appeal is withdrawn or finally determined (section 47(4)).

#### **Level of disrepair in Scotland’s built environment**

20. Local authorities have various powers under a range of legislation to take action where an owner has not maintained property.

21. The Built Environment Forum Scotland (BEFS) responded to the member’s consultation<sup>7</sup> in 2011 on Building Repairs. At that time it considered that the scale of the disrepair problem

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<sup>6</sup> North Ayrshire Council, Response 145, Non-Confidential Responses. Available at: <http://www.scotland.gov.uk/Publications/2013/01/5167/downloads>

<sup>7</sup> Keeping Scotland Safe, the Building Repairs (Scotland) Bill Consultation. Available at: <http://www.davidstewartmsp.org.uk/consultation/>

and the potential financial implications were a major disincentive to local authorities. The Forum noted further that the extent of the problem was likely to increase:

“There are estimates from the Scottish House Condition Survey (2009) which indicate that almost eighty percent (78%) of dwellings in Scotland have some disrepair. When it is considered that new built property only adds 1% to the existing stock and that the majority of the current 99% of buildings will still be standing by 2050 then the scale of defective or dangerous buildings is potentially enormous.”<sup>8</sup>

22. The Scottish Housing Condition Surveys for 2009, 2010 and 2011 demonstrates this trend toward increasing disrepair in the housing stock.

Level of Disrepair in Scotland's Dwellings		
Year	% of any disrepair	% of urgent disrepair*
2011 <sup>9</sup>	83%	48%
2010 <sup>10</sup>	81%	46%
2009 <sup>11</sup>	78%	44%

23. Another indicator of disrepair in Scotland's built environment is the number of notices issued in relation to defective or dangerous buildings. Figures provided in response to a Parliamentary Question show that in 2010-11, 187 dangerous buildings notices were issued by 26 local authorities. This increased to 212 during 2011-12 with 27 local authorities making use of the notice procedure. For defective buildings in the same periods a total of 96 notices were issued by nine local authorities, which rose to 206 notices issued by 15 local authorities.<sup>12</sup>

24. Local authorities can also take action without notice in relation to dangerous buildings, and again these figures show an increasing trend with local authorities taking action on 402<sup>13</sup> occasions in 2010-11 rising to 992<sup>14</sup> during 2011-12.

## Cost recovery

### *Local authority debt levels*

25. Local Authority Building Standards Scotland (LABSS) is an organisation which represents all 32 Scottish Local Authority Building Standards Services (formerly known as

<sup>8</sup> Building Repairs Consultation Summary, Response 11, Built Environment Forum Scotland. Available at: <http://www.davidstewartmsp.org.uk/consultation/>

<sup>9</sup> Scottish Housing Condition Survey Key Findings 2011, paras 141 and 149. Available at: <http://www.scotland.gov.uk/Publications/2012/12/4995/0>

<sup>10</sup> Scottish Housing Condition Survey Key Findings 2010, paras 114 and 122. Available at: <http://www.scotland.gov.uk/Publications/2011/11/23172215/0>

<sup>11</sup> Scottish Housing Condition Survey Key Findings 2009, paras 102 and 110. Available at: <http://www.scotland.gov.uk/Publications/2010/11/23125350/0>

<sup>12</sup> Question S4W-13217: Liz Smith, Mid Scotland and Fife, Scottish Conservative and Unionist Party, Date Lodged: 21/02/2013

<sup>13</sup> Building Standards Annual Return 2010-11, Building Services Division, Page 17, paragraph 11.5. Available at: <http://www.scotland.gov.uk/Resource/0040/00401521.pdf>

<sup>14</sup> Question S4W-17343: David Stewart, Highlands and Islands, Scottish Labour, Date Lodged: 20/09/2013

SABSM). LABBS contributed to a recent research project<sup>15</sup> commissioned by the Scottish Government aimed at identifying ways to improve the recovery by local authorities of costs incurred on work to deal with dangerous and defective buildings under the 2003 Act. It expressed the view that a relatively weak system of enforcing cost recovery means that a significant burden of unrecovered costs is placed on the public purse by people who allow their buildings to deteriorate to the point at which councils must take action.<sup>16</sup>

26. The research project collected information from eight<sup>17</sup> local authorities on their cost recovery experience when carrying out their duties concerning defective and dangerous buildings. The project estimated the total unpaid debt for the eight authorities amounted to £1.5 million. This figure, when roughly extrapolated, produced an estimated all-Scotland figure of £3.9 million.<sup>18</sup> Also of interest was the varying level of unpaid debts. The case study authorities demonstrated these could range from a few thousand pounds in the case of Highland to several hundreds of thousands in the cases of Fife, Glasgow, Renfrewshire and Borders.<sup>19</sup>

27. The research project estimated the cost recovery rate to be around 50%.<sup>20</sup>

### **Barriers to cost recovery**

28. Responses to the member's consultation highlighted a number of barriers to cost recovery. Identifying ownership in respect of multiple-ownership properties was highlighted as a particular difficulty. Local authority respondents indicated that searches for this information, and use of data protection legislation, were often protracted and resource-intensive.<sup>21</sup>

29. Scottish Borders Council reported that it currently uses "a range of methods including writing to people at the address of the defective property; legal searches through Registers Direct and through undertaking detailed searches through search companies. Nevertheless, sometimes property owners cannot be traced and even where we are able to secure a lead on the location of any owner, we regularly encounter barriers under the Data Protection Act"<sup>22</sup>.

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<sup>15</sup> Available at: [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

<sup>16</sup> The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012, Views of LABSS, para 2.3.3, Available at: <http://www.scotland.gov.uk/Resource/0041/00412487.pdf>

<sup>17</sup> Dundee City Council, The City of Edinburgh Council, Fife Council, Glasgow City Council, Highlands Council, Perth and Kinross Council and Renfrewshire Council

<sup>18</sup> The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012, Extent of cost recovery, para 4.4.10, Available at: <http://www.scotland.gov.uk/Resource/0041/00412487.pdf>

<sup>19</sup> The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012, Extent of cost recovery, para 4.4.8, Available at: <http://www.scotland.gov.uk/Resource/0041/00412487.pdf>

<sup>20</sup> Recommendations for change, para 4.7.3, [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

<sup>21</sup> Building Repairs Consultation Summary, Para 24. Available at: <http://www.davidstewartmsp.org.uk/consultation/>

<sup>22</sup> Building Repairs Consultation Summary, Scottish Borders Council, Response 8, Built Environment Forum Scotland. Available at: <http://www.davidstewartmsp.org.uk/consultation/>

30. The Scottish Federation of Housing Associations (SFHA) also confirmed that there could be problems in tracing owners in mixed tenure blocks, especially given the popularity of “buy to let” flats.<sup>23</sup>

31. In the cases described above, making a charging order would give the local authority some greater assurance that their outstanding costs will be recovered at some point in the future.

32. The introduction of charging orders was supported not only by local authority responses to the member’s consultation, but also in response to the Scottish Government’s more recent consultation on the Community Empowerment and Renewal Bill as the response from Renfrewshire Council illustrates:

“At present, cost recovery is pursued as a civil debt and additional costs are incurred in tracing ownership and pursuing individuals. Should a business or person become bankrupt, then any debt in relation to work under the Act joins the queue with all other creditors and often has a lower priority than those creditors. Additional legal cost can also be incurred where costs have to be pursued through the courts. Public authorities require to have the option of pursuing costs in the most effective manner possible and the reintroduction of charging orders would greatly assist this process. The charging order is placed upon the property rather than the individual and has priority over other debts. The costs are eventually recovered when the property is sold.”<sup>24</sup>

33. The recent research project also provides evidence that the current cost recovery methods are not sufficient and that charging orders would address some of the issues faced by local authorities. An example below characterises the diverse difficulties faced by local authorities in recovering costs:

“...one council is owed around £400,000 by an owner who is believed to be resident in the United States and who shows no intention of paying the debt.”<sup>25</sup>

### **Benefits of charging orders**

34. The member’s consultation in 2011 on the proposed Bill sought views on the benefit of charging orders for recovery of local authority expenses. In response to the member’s consultation, the City of Edinburgh Council pointed out:

“This would be an option for owners who may not have sufficient capital at the time to allow them to privately arrange the repairs or fully to meet their

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<sup>23</sup> Building Repairs Consultation Summary, Scottish Federation of Housing Associations, Response 26, Built Environment Forum Scotland. Available at: <http://www.davidstewartmsp.org.uk/consultation/>

<sup>24</sup> Proposed Community Empowerment and Renewal Bill Consultation, Renfrewshire Council, Response 239, Non-Confidential Responses. Available at: <http://www.scotland.gov.uk/Publications/2013/01/5167/downloads>

<sup>25</sup> The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012, Experience in cost recovery, para 4.3.13, Available at: <http://www.scotland.gov.uk/Resource/0041/00412487.pdf>

liability if these are carried out in default. This may be of particular interest to those on low income or pension.<sup>26</sup>

35. West Dunbartonshire Council concurred with this view:

“Placing of a charging order could be a solution for some owners who are facing short term financial issues...as a charging order would allow them to have the defect remedied now and pay sometime later.”<sup>27</sup>

36. Other advantages over existing cost recovery methods were identified. Some respondents suggested that charging orders would provide comfort to local authorities which would assist greatly in ensuring that defective or dangerous properties received the necessary repairs thereby ensuring public safety. Another attribute highlighted was that the “threat” of charging orders might encourage co-owners to co-operate.<sup>28</sup>

37. The member’s summary set out the main benefits identified by those responding—

- Greater certainty to local authorities that they would ultimately recover their costs;
- Charging orders attach to the property rather than to the owner, therefore providing some security in cases where the owner does not have sufficient funds;
- Avoids the legal costs involved in pursuing the debt through a civil action;
- Would bring the position in line with the Housing (Scotland) Act 2006 which makes provision for the use of Repayment Charges.<sup>29</sup>

38. The Scottish Government’s consultation on the Community Empowerment and Renewal Bill in June 2012 asked “What changes should be made to local authorities’ powers to recover costs for work they have carried out in relation to dangerous and defective buildings under the Building (Scotland) Act 2003?”<sup>30</sup>. An interesting response was submitted by Inverclyde Council, which explained the inequality across legislation with not having charging order powers available under the 2003 Act:

“...within Inverclyde Council Environmental Health Officers in addition to Building Standards Officers are authorised under Section 28 of this Act to deal with defective buildings. The vast majority of complaints regarding building defects are already channelled to Environmental Health Officers who utilise a range of legal powers including the Housing (Scotland) Act 2006, Environmental Protection Act 1990 and the Building (Scotland) Act 2003, dependant on circumstances, to deal with those defects. It is therefore

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<sup>26</sup> Building Repairs Consultation Summary December 2011, paragraphs 58-9. Available at: <http://www.davidstewartmsp.org.uk/consultation/>

<sup>27</sup> Building Repairs Consultation Summary December 2011, paragraph 60. Available at <http://www.davidstewartmsp.org.uk/consultation/>

<sup>28</sup> Building Repairs Consultation Summary December 2011, paragraph 61. Available at <http://www.davidstewartmsp.org.uk/consultation/>

<sup>29</sup> Building Repairs Consultation Summary December 2011, paragraph 43. Available at <http://www.davidstewartmsp.org.uk/consultation/>

<sup>30</sup> Proposed Community Empowerment and Renewal Bill Consultation. Available at: <http://www.scotland.gov.uk/Publications/2012/06/7786>

strongly recommended that legislation to permit a charging order arrangement be seriously considered.”<sup>31</sup>

39. Not only does this response pick up on the lack of parity across various pieces of legislation, but it shows that local authorities are having to make use of other legislation to deal with defective or dangerous buildings rather than by making use of the legislation created specifically to address these circumstances.

40. East Ayrshire Council in its response to the Scottish Government consultation advised of a particular problem with absentee owners. It believed charging orders should be reintroduced to allow costs incurred by the local authority to be charged against the land/property because “at present it applies to the owner. This can be a challenge if the owner is not UK resident. Given the number of derelict and vacant buildings with absent landlords a reintroduction of charges will be helpful”<sup>32</sup>. This response also demonstrates the particular issues faced by rural communities where a higher proportion of owners might not live in the area having moved away for economic reasons or are second home owners who are now unable to maintain their property in the economic downturn.

41. Argyll and Bute Council thought the 2003 Act should be amended so that charging orders can be placed on a property where an owner or owners fail to pay for work undertaken by the local authority in default. The Council believed “currently the lack of such power is considered to contribute to a disincentive to become involved with disrepair/danger where the owner cannot be relied on to co-operate”<sup>33</sup>. This view was also shared by Perth and Kinross Council.<sup>34</sup>

42. The Scottish Government research project also identified similar benefits specifically pinpointing: the high probability that cost will be recovered in all or in part at some point, is easy to put in place, and is an incentive for the debtor to pay or negotiate settlement.<sup>35</sup> There was general agreement among the project’s consultees that steps should be taken to improve cost recovery and that powers to “attach” debts to properties would be of major benefit.<sup>36</sup>

43. It would be disingenuous not to acknowledge that there are some weaknesses associated with this cost recovery method because of the potential long-term nature of a charging order. However, much as it is recognised that charging orders are not a cure-all solution, the Bill will provide an additional remedy which will further contribute to the range of cost recovery remedies available to local authorities. Charging orders will be more appropriate in some cases

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<sup>31</sup> Inverclyde Council, Response 156, Non-Confidential Responses. Available at: <http://www.scotland.gov.uk/Publications/2013/01/5167/downloads>

<sup>32</sup> East Ayrshire Council, Response 297, Non-Confidential Responses. Available at: <http://www.scotland.gov.uk/Publications/2013/01/5167/downloads>

<sup>33</sup> Argyll and Bute Council, Response 317, Non-Confidential Responses. Available at: <http://www.scotland.gov.uk/Publications/2013/01/5167/downloads>

<sup>34</sup> Perth and Kinross, Response 367, Non-Confidential Responses. Available at: <http://www.scotland.gov.uk/Publications/2013/01/5167/downloads>

<sup>35</sup> Recommendations for Change, 4.7.10, [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

<sup>36</sup> Conclusions, 4.8.5, [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

than others. It is for local authorities to make a decision on the cost recovery method based on their knowledge of the individual circumstances of each case.

### **Scottish Government's position**

44. An official from the Scottish Government, when providing evidence on Dangerous Buildings and Building MOTs on 18 January 2012 to the Local Government and Regeneration Committee, stated:

“We do not necessarily seek to reintroduce charging orders. In our business plan for this year, we have committed to working to secure the best mechanism whereby local authorities can recover their costs”<sup>37</sup>.

45. Procedurally, the Scottish Government could have blocked the member's proposal if, within the same session, it intended to give effect to the final proposal, i.e. provide for charging orders. The Scottish Government did not exercise this right.

46. The Scottish Government recognises local authority cost recovery is an issue and commissioned a research project to assist it in developing its plans for a cost recovery mechanism, which it is understood will be included in its forthcoming Community Empowerment and Renewal Bill.

47. In June 2012 the Scottish Government consulted<sup>38</sup> on the proposed Community Empowerment and Renewal Bill which sought comment on the possible cost recovery mechanism for dangerous and defective buildings.

48. Around a third of respondents provided views on the powers to recover costs with local authorities being the main group of respondents. The majority of these respondents felt that extended powers were required, with the most common suggestion, highlighted by a very significant number of those who responded, calling for the introduction of charging orders.<sup>39</sup> North Lanarkshire Council commented:

“The reintroduction of charging orders for local authorities to recover debt in relation to dangerous and defective buildings under the Building (Scotland) Act 2003 would be a positive move. This should allow authorities the power to recover all costs and associated fees, including interest, through a Charge over the property rather than through the courts (including full recovery on re-sale or transfer). Local authorities have previously expressed concern that the removal of charging orders has significantly affected their ability to

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<sup>37</sup> Local Government and Regeneration Committee, 18 January 2012, Official Report, Col 544

<sup>38</sup> Scottish Government consultation on the Community Empowerment and Renewal Bill. Available at: <http://www.scotland.gov.uk/Publications/2012/06/7786>

<sup>39</sup> Consultation on the proposed Community Empowerment and Renewal Bill – Analysis of Responses, Theme 21 Dangerous and Defective Buildings, para 5.30 <http://www.scotland.gov.uk/Publications/2013/01/9545>

recover costs. This is reflected in the amount of debt that is outstanding across all authorities for action taken on dangerous buildings”<sup>40</sup>.

49. It is not known at this time what the Scottish Government proposes in terms of its plans for cost recovery except that it has indicated it will not be legislating for charging orders.

50. The member believes the charging order is a tried and trusted method and should be an integral part of the suite of recovery measures alongside civil debt recovery procedures and the Scottish Government’s proposals.

## **DETAIL OF THE BILL**

51. The intention is that the charging order should operate by means of local authorities placing a formal charge over the building concerned. Section 55 of the 2003 Act gives a wide meaning to “building”, which covers any structure or erection, whether temporary or permanent. It embraces commercial and residential property, and includes where appropriate part of a building. This would be repayable over a fixed 30-year term, through 30 annual instalments, or earlier by negotiation, where the owner is in a position to redeem by paying the local authority an agreed sum. The charge itself would be registered in the Land Register of Scotland or, as appropriate, the Register of Sasines.

### **Repayable amount**

52. The primary costs which are recoverable are those incurred by local authorities carrying out the work to a defective or a dangerous building. It also includes expenses incurred by a local authority in demolishing a building. Expenses extend to work contracted out by the local authority and, for example, any staff time in arranging the repairs. These are called the “qualifying expenses”.

53. In addition to works costs, the local authority can also recover the cost of registering or discharging a charging order, around £50 (see paragraphs 60 and 62), and any administrative costs associated with a charging order. The local authority can also recover interest. It is not considered necessary or appropriate for an interest rate to be specified on the face of the Bill, however, for transparency, a charging order requires that the interest rate is to be specified, together with any formula for calculating it. The rate is otherwise for the local authority to determine on the basis that it must of course be reasonable.

54. The repayable amount is the total of the qualifying expenses, the charging order registration or discharge fee, administrative or other expenses (e.g. cost involved in notifying the owner of the local authority’s intention to make a charging order or the time taken to prepare a charging order for registration) incurred in relation to the charging order, and interest.

55. The Bill does however, at inserted 46C(1), allow the local authority to determine a lower repayable amount. This might be used for example by the local authority to reduce the amount

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<sup>40</sup> Consultation responses on the proposed Community Empowerment and Renewal Bill – North Lanarkshire Response No. 327 <http://www.scotland.gov.uk/Publications/2013/01/5167/downloads>

to be repaid to encourage settlement of the outstanding debt. This fits also with one of the Bill's overarching goals, in relation to encouraging early repayment as explained at paragraph 5.

56. Where an owner fails to pay the annual instalment amount the local authority can pursue the debt ultimately by means of civil debt processes. If any amount is outstanding at the end of the 30-year term this amount is immediately payable and, if not repaid, can be recovered in the normal manner through the courts.

### **Early redemption**

57. As outlined, an essential part of the policy is the encouragement of early repayment. To this end the Bill provides a mechanism for early redemption. The Bill provides for this at inserted 46D(2). An owner might be encouraged to redeem the repayable amount early because it might result in a reduction in the sum to be paid. A change in an owner's financial circumstances might prompt them to seek to agree an early settlement figure with the local authority. The local authority would identify an amount, taking account of sums which had been paid by it to third party contractors in carrying out repairs to the property or demolition work. It might decide to round down the total amount due to it or waive in-house administrative costs.

58. Where agreement cannot be reached between the local authority and the owner, the matter could be referred to the Scottish Ministers for determination. Both parties would have to submit information and any evidence to support their case, adhering to any timetable set by the Scottish Government. This information would then be considered by the relevant Scottish Government Division who would make a recommendation to the Minister who in turn would take a decision on the sum to be paid. Reference is made in this regard to section 46D(2)(b) of the Bill, which provides for a determination to be made by the Scottish Ministers, either generally by virtue of the order making power set out at section 46D(4), or specifically in regard to the charging order which is before them.

59. It is not anticipated that this facility would be used regularly and indeed an equivalent provision contained within section 172 of the Housing (Scotland) Act 2006 has not been used to date. The existence of this power of determination perhaps serves to assist the negotiation process and again feed into the policy of early repayment. The Scottish Ministers can make subordinate legislation under section 46D(4) to make further provision in relation to repayment or early redemption. An example of the use of this power could be specifying the factors that must be taken into account when ministers make a decision on the early settlement figure.

### **Registration and discharge**

#### *Registration*

60. A charging order will be registered in the relevant land register. The fee for doing so is to be based on that for a "repayment charge" under the Housing (Scotland) Act 2006. A "repayment charge" under that Act can currently be registered for a fee of £60, however if the automated system is used it costs £50. It is anticipated that a charging order could be registered for the same cost. Fixed securities, such as standard securities, commonly rank according to the date on which they are registered in the relevant property register. Ranking refers to the priority order in which creditors are entitled to receive funds. And, in general terms, fixed securities rank

prior to those which are not fixed, such as floating charges. A charging order under the 2003 Act will rank according to the date of its registration and is a fixed security.

61. A charging order has effect from the date of registration, and attaches to the property over which it is secured. Ordinarily, it can be enforced against anyone who has derived title to the property, for example in consequence of having inherited it (section 46E(3)). However, a limited exception is provided for under the Bill in the case of a third party who acquired right to the property in good faith and at market value before the charging order is registered. Similarly, anyone who obtained title from that third party (section 46E(4)). A charging order cannot be enforced against such persons.

### *Discharge*

62. A local authority is obliged to register a discharge of a charging order on payment of either the repayable amount or the agreed early settlement figure, as soon as is reasonably practicable following discharge of the order. The fee for discharge is anticipated to be the same as the fee for registration, which is £50. On receiving payment of the repayable amount or a sum agreed as redeeming the full amount, the local authority would prepare the discharge. The discharge would include information such as the title number and the date the charging order was registered in the land register. A discharge is effective from the date on which it is formally registered. It provides evidence that the charging order has been “cleared” and the title returned to an unencumbered state.

### **Appeals**

63. The Bill amends section 47 of the 2003 Act in relation to appeals. Appeals are limited to matters which could not have otherwise been raised on an appeal against the original notice or the decision requiring the works to be carried out. It is therefore unlikely that an appeal against a charging order on the basis of the cost of the work or the apportionment of costs would be considered admissible.

64. An example of the circumstances which could conceivably lead to an appeal would be where a change of ownership has taken place in the period between when the costs were incurred by the former owner and the decision was taken by a local authority to seek a charging order. The new owner might, under reference to inserted section 46E(4) of the Bill, appeal on the basis that they were not aware of any work having been carried out by the local authority or outstanding debts to the local authority when they purchased the property.

65. An appeal will be by summary application to the sheriff. In accordance with the appeal procedure set out at section 47 of the 2003 Act, this requires to be made within 21 days of the date of the charging order or related decision concerned with it.

### **Form of a charging order and discharges**

66. Inserted Schedule 5A sets out the form and content of a charging order, which is to cover such matters as the postal address of the building, the repayable amount, the amount of the annual instalments and the date the instalments are to be paid. Local authorities are also allowed to include other minor provisions concerning the charging order; these might concern further

ancillary information which a local authority considers relevant to the effective operation of the charging order.

67. Discharges must set out such matters as the title number and the date of registration in the appropriate land register, and the date the charging order was registered to enable the Keeper of the Registers of Scotland to register the discharge.

## **Commencement**

68. The Bill contains two order making powers. Firstly, the provision set out at inserted 46A(3) allows the Scottish Ministers to make an order specifying the form of a charging order or a discharge. Inserted 46D(4) enables the Scottish Ministers to make further provisions about repayment or early redemption. These sections come into effect immediately after Royal Assent to allow the Scottish Government sufficient time to make any subordinate legislation to assist local authorities in the operation of the Act. Local authorities will be able to use the charging order procedure six months after Royal Assent. That is to say, the charging order mechanism created under the Bill applies to notices or works under the relevant provisions in sections 28, 29 and 30 which are given or carried out, as appropriate, after commencement of the new legislation six months from Royal Assent.

## **CONSULTATION**

69. The member's original proposal on this topic was lodged on 16 December 2010 (Session 3) and consulted on until 11 March 2011. The consultation, "Keeping Scotland Safe"<sup>41</sup> was concerned principally with a change to cost recovery in respect of building repairs while consulting more widely on other possibilities relating to dangerous and defective buildings. The key change proposed was the reintroduction of charging orders as a means of cost recovery for both dangerous and defective building notices. Additionally it was proposed that there should be a change in the timescale requirement for owners to carry out repairs on defective buildings to ensure that there was adequate time for owners to make arrangements prior to the authority carrying out such work. Other subsidiary issues were also covered in the consultation paper, such as the provision for a licensing and inspection regime (building MOTs) and for an equal-share regime for houses in multiple ownership.

70. A total of 43 responses were received. Of these, 21 responses were from local authorities who implement current housing and building legislation, including the 2003 Act. Other respondents included community councils, Consumer Focus Scotland, housing associations, a property management company, bodies concerned with the built environment, a Member of the UK Parliament, an equality body and individual members of the public. A total of 35 (81%) respondents were in favour of legislation to provide for charging orders.<sup>42</sup>

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<sup>41</sup> David Stewart MSP Consultation on the Building Repairs (Scotland) Bill. Available at [http://www.scottish.parliament.uk/S3\\_MembersBills/Draft%20proposals/BuildingRepairsConsultationPaperFinal.pdf](http://www.scottish.parliament.uk/S3_MembersBills/Draft%20proposals/BuildingRepairsConsultationPaperFinal.pdf)

<sup>42</sup> Building Repairs Consultation Summary December 2011, paragraph 8. Available at <http://www.davidstewartmsp.org.uk/consultation/>

71. Fewer than 10% of respondents (four respondents) stated that they did not support the proposals, the principal reason being that they did not consider that further legislation was necessary.<sup>43</sup>

72. Respondents were less certain whether the other changes proposed in the consultation were necessary or deliverable; namely, the proposed extension to twelve weeks for repair works; the automatic apportionment of costs in equal shares in cases of shared ownership and a new certification and registration scheme.

73. The summary stated that the main reason for difficulty in enforcing the defective and dangerous building legislation was identified as financial. For example, respondents pointed to the limited resources available to local authorities in terms of staffing and finances to enforce repairs, as well as the difficulties of cost recovery in cases where the local authority had been obliged to undertake the repair work itself.<sup>44</sup> Highland Council indicated that, “The staff resource most Local Authorities (LAs) have for dealing with defective and dangerous buildings means the LAs can only provide a reactionary level of service”<sup>45</sup>.

74. A number of respondents pointed to provisions in the Housing (Scotland) Act 2006 which assisted in the repair and cost recovery in respect of domestic premises and the lack of equivalent powers in relation to commercial properties. City of Edinburgh Council pointed out that, “No single Act currently meets the majority of circumstances and each has significant barriers to their implementation on a regular basis”<sup>46</sup>.

75. With regard to what could be done to improve the situation the main suggestions were: rationalisation and simplification of the plethora of legislation relating to defective and dangerous buildings; and a more effective system of costs recovery.<sup>47</sup> Scottish Association of Building Standard Managers (SABSM now known as LABSS) stated:

“Given the plethora of legislation, it would make sense for a single piece of legislation to apply consistently across all building types unless there were particular aspects relating to dwellings which it thought were worth keeping.”<sup>48</sup>

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<sup>43</sup> Building Repairs Consultation Summary December 2011, paragraph 13. Available at <http://www.davidstewartmsp.org.uk/consultation/>

<sup>44</sup> Building Repairs Consultation Summary December 2011, paragraph 19. Available at <http://www.davidstewartmsp.org.uk/consultation/>

<sup>45</sup> Building Repairs Consultation Summary December 2011, paragraph 21. Available at <http://www.davidstewartmsp.org.uk/consultation/>

<sup>46</sup> Building Repairs Consultation Summary December 2011, paragraph 23. Available at <http://www.davidstewartmsp.org.uk/consultation/>

<sup>47</sup> Building Repairs Consultation Summary December 2011, paragraph 31. Available at <http://www.davidstewartmsp.org.uk/consultation/>

<sup>48</sup> Building Repairs Consultation Summary December 2011, paragraph 32. Available at <http://www.davidstewartmsp.org.uk/consultation/>

76. However, SABSMS was strongly of the view that the re-introduction of charging orders powers into the 2003 Act should be actioned now.<sup>49</sup>

77. In relation to extending the time limits, eight respondents identified only benefits in respect of this proposal, the key message being that owners should have sufficient time to carry out repairs before a charging order would be placed on a property. Fifteen respondents noted both advantages and disadvantages in respect of this proposal, while a further 10 respondents saw no advantages to this proposal. They argued that the current legislation provides minimum timescales only and that there is sufficient flexibility within statute for the time periods to be extended.<sup>50</sup>

78. Views were also sought on automatic apportionment of costs of repairs on an equal shares basis in the case of shared ownership and the introduction of a requirement for building owners to submit to a regular certification and regular inspection regime of their property. With regard to automatic apportionment of costs, respondents noted advantages such as: it would remove local authorities from potential litigation, which could be carried out among owners; the process would be much simpler and straightforward; and it should encourage a more strategic approach.<sup>51</sup> Disadvantages highlighted were: the system could produce inequity in cases among different sized properties; the mechanism was likely to be of most benefit to commercial properties as these were likely to be larger than the residential properties in the same building; equal shares proportions might be in conflict with existing legislation; such a step was unnecessary as the Tenements (Scotland) Act 2004 made provision for the division of costs.<sup>52</sup>

79. In relation to the introduction of a requirement for building owners to submit to a regular certification and regular inspection regime of their property, the key message emerging from the responses to this question was that, while it was recognised that a mandatory property “MOT” could improve Scotland’s built environment, further examination and consultation on such a scheme was required before it could be supported or should be taken forward.<sup>53</sup>

80. The draft proposal fell at the end of Session 3 along with all other member’s bill proposals where legislation had not been introduced. This session, the member lodged a scaled-back draft proposal which focused solely on the introduction of charging orders to enable local authorities to recover their costs under sections 28, 29 or 30 of the 2003 Act. This was lodged on 17 January 2012 and accompanied by a statement of reasons. The Local Government and Regeneration Committee considered the draft proposal and the statement of reasons at its meeting on 8 February 2012.<sup>54</sup>

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<sup>49</sup> Building Repairs Consultation Summary December 2011, paragraph 32. Available at <http://www.davidstewartmsp.org.uk/consultation/>

<sup>50</sup> Building Repairs Consultation Summary December 2011, paragraph 67-73. Available at <http://www.davidstewartmsp.org.uk/consultation/>

<sup>51</sup> Building Repairs Consultation Summary December 2011, paragraph 92. Available at <http://www.davidstewartmsp.org.uk/consultation/>

<sup>52</sup> Building Repairs Consultation Summary December 2011, paragraph 94. Available at <http://www.davidstewartmsp.org.uk/consultation/>

<sup>53</sup> Building Repairs Consultation Summary December 2011, paragraph 100. Available at <http://www.davidstewartmsp.org.uk/consultation/>

<sup>54</sup> [Official Report, Local Government and Regeneration Committee, 8 February 2012](#)

81. Following this meeting the Committee wrote to the member asking him to consult Business Improvement Districts (BIDs) (a geographic area of a town where businesses vote to invest collectively in local improvements with the aim of creating an improved business environment and improve economic growth) before proceeding to lodge a final proposal.

82. Responses received from BIDs stated their general support for the introduction of charging orders which would enable local authorities to be in a stronger position to recover expenses incurred in relation to work they had carried out. BIDs believed the introduction of charging orders could encourage local authorities to become more proactive in dealing with the issue of dangerous and defective buildings which can blight a town.<sup>55</sup> Business Improvement Districts Scotland wanted to ensure that BIDs were fully consulted and engaged as far as possible in measures concerning the improvement of defective buildings within their respective areas.<sup>56</sup>

83. The Local Government and Regeneration Committee further considered the draft proposal at its meeting on 21 February 2012<sup>57</sup> and agreed that it was satisfied with the member's statement of reasons as to why further consultation was unnecessary. The member lodged his final proposal on 15 March 2012 and secured the necessary support to gain the right to introduce a bill.

## **ALTERNATIVE APPROACHES**

### **Consideration of other policy approaches**

84. Some of the responses to the consultation suggested the legislation in this area required to be streamlined. In particular the response from SABSM stated, "Given the plethora of legislation, it would make sense for a single piece of legislation to apply consistently across all building types unless there were particular aspects relating to dwellings which it thought were worth keeping."<sup>58</sup> The member acknowledged this suggestion but recognised that this was too substantial a task for a member's bill.

85. The member also accepted the Scottish Government's view relating to cost recovery on an equal share basis where a building has multiple owners responsible for maintenance. It explained recovery of costs on an automatic shares basis "is a simple concept and may speed up the debt recovery". However, it was concerned that "title deeds often have provisions for repairs to be divided up based on such criteria as size and therefore it would seem inequitable to ignore

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<sup>55</sup> Responses to the consultation from Business Improvement Districts. Available at: <http://www.davidstewartmsp.org.uk/consultation/>

<sup>56</sup> Response from Business Improvement Districts Scotland. Available at: <http://www.davidstewartmsp.org.uk/consultation/>

<sup>57</sup> [Official Report, Local Government and Regeneration Committee, 21 February 2012](#)

<sup>58</sup> Building Repairs Consultation Summary December 2011, paragraph 31. Available at <http://www.davidstewartmsp.org.uk/consultation/>

these agreements”<sup>59</sup>. Consumer Focus Scotland also pointed out that where there are gaps in the title deeds or they are silent, the Tenement Management Scheme applies.<sup>60</sup>

86. The member noted the majority of responses wanted charging orders to be available under the 2003 Act for defective and dangerous buildings. Therefore no alternative cost recovery means was considered, although a number of issues which arose when developing the Bill were considered and are explained below.

### **Ranking of a charging order**

87. The member considered whether charging orders under the 2003 Act should have prior ranking over other charges, as was the case with charging orders under the 1959 Act. The case for and against this approach involves consideration of competing interests. It is recognised that by affording charging orders prior ranking status over existing securities, this would place local authorities in a stronger cost recovery position. However, the position of standard security holders, such as mortgage lenders, is also acknowledged. The position taken by the Bill respects the status of existing fixed security holders.

### **Period of a charging order**

88. Another consideration was whether a fixed period should be provided for in terms of the repayment of a charging order or whether the period should be flexible. Most charging order schemes allow for payment to be made over a 30-year term, however the member considered there might be benefits to having a shorter term, to allow local authorities to recoup their costs more quickly. A shorter timescale would increase the annual instalment amount which some owners might be unable to afford therefore might be more likely to default. Equally, lengthening the period for payment for larger outstanding sums would make the payment more manageable for owners to pay but would make charging orders a less effective recovery method. The member therefore appreciates there is a balance to be struck and with no evidence to support changing the often used 30-year term, the member considered it appropriate to follow the established approach.

### **Calling-up of a charging order**

89. Another point which arose in developing the policy approach was the calling-up of the charge. Essentially, “calling-up” represents a process in terms of which, in the event of payments not being maintained, the relevant formal agreement can be brought to an end, and an owner can be required to repay immediately the whole amount outstanding. There are limited powers of call-up of charging orders in the residential care context, under the Health and Social Services and Social Security Adjudications Act 1983. These powers are linked to the call-up provisions in the Conveyancing and Feudal Reform (Scotland) Act 1970 as modified in relation to the 1983 Act. Where the owner is alive these call-up powers are exercisable only in limited circumstances: on the homeowner’s insolvency, on the sale or transfer of their interest in land, or on the calling-up of a standard security over the property concerned. The member is aware that

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<sup>59</sup> Building Repairs Consultation Summary December 2011, paragraph 95. Available at <http://www.davidstewartmsp.org.uk/consultation/>

<sup>60</sup> Building Repairs Consultation Summary December 2011, paragraph 96. Available at <http://www.davidstewartmsp.org.uk/consultation/>

in today's circumstances, depending on the precise nature of the calling up power, it might raise significant European Convention on Human Rights (ECHR) consequences. Accordingly the approach taken is deemed to be the most proportionate.

### **Charging orders continued liability on sale**

90. Section 49 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 gives planning authorities the power to undertake urgent works required to preserve listed buildings. Section 26 of the Historic Buildings (Amendment) (Scotland) Act 2011 introduces new provisions (section 50A-G of the 1997 Act) for recovering expenses for works undertaken on buildings under the terms of the Act. These enable a notice of liability for expenses to be registered in the appropriate property register against a listed building. Should the property be sold the new owner will also be liable for the costs, along with the current owner. The member recognises this approach was considered to have been appropriate given the characteristics of the buildings it applies to, and their significance within Scotland's heritage. The member did not however consider it to be the most appropriate approach for the wider circumstances of repairs to defective or dangerous buildings (most of which are not listed or otherwise of significant heritage value).

### **Retrospective application of charging orders**

91. In evidence to the Local Government and Regeneration Committee on Building MOTs, SABSM, now LABSS, made a plea for charging orders to be attached to properties retrospectively. The member acknowledges the substantial amount of unrecovered debt to date and gave careful consideration to this approach. However, he was concerned that this approach could give rise to significant ECHR implications, with an increased risk of challenge, as owners could not have known at the time the debt was incurred that charging orders would be available. It is of course unusual for legislation to be applied retrospectively, and this tends not to be done other than in quite exceptional circumstances.

### **Defective and dangerous buildings loan fund**

92. The member also took cognisance of the call to establish a loan fund. LABSS has consistently argued that as a priority, because local authorities need resources to meet essential costs and that this should be addressed by the Scottish Government. LABSS preference is for charging orders to be available along with the creation of a national fund on which authorities can draw to meet the costs of work on dangerous buildings. The member has sympathy with the potential benefits of this approach, however it is clear that a member's bill is not the appropriate vehicle for creation of a loan fund because of the cost implications.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

### **Equal Opportunities**

93. The Bill's provisions are not discriminatory on the basis of gender, race, age, disability, religion and belief or sexual orientation. Whilst applying a charge to a property might affect the market value of property if selling a property this is mitigated in that the work carried out will

have contributed to the integrity of the fabric or structure of the building and as a consequence will have had a positive impact on the value of the property. Older people and carers as a group are much more likely to have low incomes. The introduction of charging orders, where the debt is secured on the property and not the person, would have a positive impact on equalities as it would enable those on low incomes to pay off the debt at a more manageable rate.

## **Human Rights**

94. Article 1 Protocol 1 (A1P1) of ECHR concerns the protection of property and provides that every natural or legal person is entitled to the peaceful enjoyment of his or her possessions. The right is a qualified one, it being further provided that no one shall be deprived of his or her possessions except in the public interest and subject to conditions. It is considered that the approach which the Bill takes to the use of charging orders is a fair and balanced one, which respects the terms of A1P1.

95. Article 6 concerns the right to a fair hearing. This provides that in the determination of a person's civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Article 6 could be invoked in relation to any process for determining someone's rights and obligations that did not provide any right of appeal. In that regard, it is considered that the Bill contains adequate and appropriate appeal provisions. The right is a restricted one, it not being possible to appeal a matter which could have been raised by means of an appeal against the original notice or decision requiring the execution of the works to which the charging order relates. But it is considered reasonable that an appeal cannot be used in those circumstances, so as to provide a second opportunity to appeal a matter which could have been appealed at an earlier point, and thereby to thwart or disrupt the process.

96. An example of the circumstances which might lead to an appeal would be where a change of ownership has taken place in the period between when the costs were incurred by the former owner and the decision was taken by a local authority to seek a charging order. The new owner might contest a charging order on the basis that they were not aware of any work having been carried out by the local authority or outstanding debts to the local authority when they purchased the property. While section 46E(4) of the Bill takes account of this situation, the local authority might not appreciate what has happened or may not readily accept what is being stated by the new owner. The person might therefore decide to appeal the charging order to allow the court to determine liability.

## **Island communities**

97. The Bill is designed to benefit the whole of Scotland. It does not have specific implications for island communities and there is no reason to suppose that local authorities whose area consists of or includes islands have any different needs compared with mainland authorities in relation to cost recovery for building repairs. Condition of property is an issue for those in urban areas living in older tenements but also for island communities. Properties in island communities can be very old, have absentee owners and be subject to extreme weather conditions giving rise to maintenance issues.

## **Local Government**

98. The Bill is intended to assist local authorities in carrying out their functions in relation to dangerous and defective buildings by providing another cost recovery mechanism without creating significant new regulatory or financial burdens on local authorities. It provides greater certainty that local authorities' costs can be recovered over the long term and also helps to promote early settlement of outstanding debt by providing flexibility for local authorities to agree a lower sum to be repaid before the expiry of the 30-year period.

## **Sustainable Development**

99. Unmaintained and derelict buildings can have a negative impact on communities, attracting vandalism and other anti-social behaviour. The Bill is expected to assist with sustainable development by enhancing the ability of local authorities to deal with defective and dangerous buildings where owners can't or won't, thus contributing to the protection of Scotland's built environment for future generations.

*This document relates to the Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 30 October 2013*

# **DEFECTIVE AND DANGEROUS BUILDINGS (RECOVERY OF EXPENSES) (SCOTLAND) BILL**

## **POLICY MEMORANDUM**

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