



The Scottish Parliament
Pàrlamaid na h-Alba

Finance Committee
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Local Government and Regeneration
Committee

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5 February 2014

Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill:
Financial Memorandum

Dear Kevin,

The Finance Committee issued a [call for evidence](#) on the Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill's Financial Memorandum (FM) on 13 November 2013 giving a deadline of 20 December 2013 for responses. A total of [eleven responses](#) were received and these are attached.

Charging orders

The responses were generally supportive of the introduction of charging orders, with Highland Council, for example, stating that this would "permit greater flexibility to the local authority on how to recover costs". Respondents were also broadly content that the FM reasonably captured the administrative costs of issuing charging orders which were described by Angus Council as being "minimal". The City of Edinburgh Council stated that "the expense of invoking the charging order is more than offset by the gain of debt recovery."

Some respondents suggested that the FM's estimate of 700 charging orders being registered Scotland-wide per year might be an underestimate, with South Lanarkshire Council, for example, stating that the figure "does appear to be low given the number of incidents the Council currently deals with, a significant proportion of which involve multiple owners." However, Highland Council suggested conversely that in its view, "this figure appears ambitious. In Highland Council there are on average no more than ten incidents per annum where the Council has been unable to recover expenses."

A number of local authorities also noted that, on the face of the Bill, it appeared that a charging order would not be transferable to a third party, potentially resulting in the order

being unenforceable against the new owner should the property be sold before the order was registered. Fife and East Ayrshire Councils suggested that an intermediate mechanism to register a “notice of potential liability for costs” should be considered in order to mitigate against this possibility.

Savings and expenditure

In relation to the estimated savings set out in the FM, some respondents sounded notes of caution. For example, Fife Council stated—

“The reference to “savings” in para 60 [of the FM] is potentially misleading. An improved cost recovery rate would reduce losses but would not achieve savings. In fact, if the view in para. 31 is correct and local authorities do become more proactive in issuing defective buildings notices and taking action into their own hands, it is more likely that local authorities will incur additional expenditure than make savings.”

Whilst it was noted that local authorities were already required by statute to take appropriate action with regard to dangerous buildings, it was suggested that the fact that the Bill would also apply to defective buildings might result in increased expenditure with COSLA, for example, stating—

“Care needs to be taken with the assumption of ‘savings’ as a result of the DBB Bill. Firstly, an improved cost recovery rate would reduce losses but would not achieve savings, and secondly, such an assumption about savings needs to be tempered by the likelihood that the level of work (and therefore bad debt) will increase if a cost recovery mechanism is put in place.”

Repayment period

A number of respondents expressed concerns that the proposed 30 year repayment period for a charging order was too long. For example, Fife Council stated that it—

“has concerns that relate to the delay between local authority expenditure and the potential 30 year repayment period recognising the large sums of money associated with some dangerous buildings interventions.”

Expanding on this point, COSLA stated—

“COSLA has concerns about the 30 year repayment period, with the view that this is too long and that it exacerbates the funding challenges that will be faced by Councils... The 30 year repayment period appears excessive for the following reasons:

- It increases the risk of non-payment;
- It ties up Council money that could otherwise be used on other services;
- The administrative burden over such a long period; and
- The 30 year period could potentially be longer than the asset life of the repair work.”

Financial support

Several respondents spoke of the need, in their view, for financial support, with COSLA stating that—

“The main issue for local authorities is therefore access to the funding to undertake the necessary work on dangerous and/or defective buildings. This is of particular concern with the likely increase in public expectation for a more pro-active approach to dangerous and defective buildings as a result of the DDB Bill.”

South Lanarkshire Council echoed this, stating—

“the move to a more ‘proactive’ approach by councils will only be likely if a support mechanism, both in monetary terms and expertise, and sufficient resources are made available.”

South Ayrshire Council suggested that a possible solution might be the creation of a “central capital fund allocation (e.g. similar to that employed for flooding) that could support local authorities until the costs incurred were recovered.”

Fife Council echoed this suggestion, stating that “a mechanism such as a central capital fund allocation should be considered to support local authorities during the cost recovery period.”

Conclusion

Your committee may wish to consider the above information along with the attached submissions in its evidence session with the Member in charge.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Ken Gibson', written over a faint, illegible stamp or watermark.

**Kenneth Gibson MSP,
Convener**