

PROPOSED BUILDING REPAIRS (SCOTLAND) BILL

STATEMENT OF REASONS BY DAVID STEWART MSP ON WHY NO FURTHER CONSULTATION IS REQUIRED

Background to current proposal

1. In line with Rule 9.14.3 of Standing Orders, this statement of reasons is lodged in conjunction with my draft proposal for a Building Repairs (Scotland) Bill. The proposal was lodged on 17 January 2012. The proposal is for a Bill—

to make provision for a local authority to recover its costs by charging order where it has carried out work to a defective or dangerous building.

2. The enforcement regime dealing with dangerous and defective buildings is not effective. This is evidenced by the substantial backlog of outstanding repairs for defective buildings and the unrecovered costs to local authorities arising from debts for such repairs and those carried out to dangerous buildings. It is also clear that, across Scotland, there is a lack of proactive work being undertaken by local authorities to deal with defective buildings prior to them reaching a state where they would be considered dangerous, leading to many unsightly and defective buildings.

3. I believe my proposed Bill will provide local authorities with the option of recouping most or all of the costs incurred in dealing with defective or dangerous buildings. Previous legislation made provision for charging orders for defective buildings but this was not carried over into the Building (Scotland) Act 2003 (“the 2003 Act”). This anomaly means local authorities have to go to court to recover costs which is time consuming and costly. My proposal aims to introduce charging orders to ensure that there will be an effective enforcement regime to allow local authorities to carry out their duties in a simpler and more cost effective way enabling them ultimately to promote public safety whilst, at the same time, protecting Scotland’s buildings for future generations.

Consultation

4. In the last session of the Parliament, I consulted on a similar draft proposal. That proposal was lodged on 16 December 2010 and consulted on until 11 March 2011. The consultation document was made available from a link on the Proposals for Members’ Bills webpage on the Scottish Parliament Website now found at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/22463.aspx>.

5. It was also issued to 272 organisations and individuals with an interest in the issue, including local authorities, tenants’ and residents’ associations, building societies and banking organisations, representative housing bodies, housing associations, community councils, equality groups and legal/rights organisations. A list of consultees has been published. Recipients were also

encouraged to bring the consultation to the attention of anyone else they thought might have an interest in the subject matter.

6. The consultation document proposed one primary change to cost recovery in respect of building repairs and consulted more widely on other related dangerous and defective buildings issues. 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 proposed 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 them to make arrangements for repair before the authority carried out the work compulsorily.

7. A total of 43 responses were received. The majority (21) were from local authorities who implement current building legislation. 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.

8. Unfortunately my proposal fell at the end of Session 3 before I could lodge my final proposal with a summary of responses. However I have now published the summary of consultation responses on my website, along with the individual responses (where permission has been granted for publication). These can be found here:

<http://www.davidstewart.org.uk/consultation/index.htm>

9. The majority of respondents (81.3%) agreed that the current legislation relating to defective and dangerous buildings needs to be reviewed. They supported the proposed introduction of charging orders as a method for the recovery of local authority costs. I have taken account of both the supportive and non-supportive comments and have streamlined my proposal so that it focuses on the addition of charging orders to the 2003 Act and not on other subsidiary issues (such as the provision for a licensing and inspection regime (building MOTs), extending the minimum time-period for owners to carry out repairs, and for an equal-share regime for Houses in Multiple Occupation).

10. In addition to carrying out the public consultation, I have taken part in a number of activities related to the subject of building repairs in order to inform the development of my policy. In particular, I have held a meeting with interested parties including the Scottish Association of Building Standards Managers (SABSM), MSPs and representatives from the Town and City Centre Development Cross Party Group, as well as the Provost of Inverness. I also published an article on the proposed Bill in the Association of Scottish Community Councils' magazine in Spring 2011.

Statement of reasons

11. In relation to my draft proposal for this Bill, I do not consider that further consultation is required.

12. I have carried out a recent, thorough, open and transparent consultation exercise. I made every effort to identify the relevant bodies with an interest in my proposal to consult with, as can be seen from my list of consultees.

13. My consultation paper invited comment specifically from representative equality groups and also asked a question more generally on any possible equality issues that my proposal might give rise to.

14. My continued discussions with interested parties have shown that the views expressed during the consultation period have not materially changed and I therefore have no reason to believe that stakeholder and the public's views have altered from those expressed in my very recent consultation.

15. I believe further consultation on such a similar proposal would duplicate effort, incur unnecessary cost and could create the impression of 'over consultation'.

16. I therefore do not consider that a further consultation exercise needs to be conducted on my proposal for a Bill for the reasons set out above. I believe that there is ample published, current and pertinent information to help test, develop and refine my proposal. The information will enable me to proceed with the development of the Bill's detailed policy and proceed to drafting a Bill.

Conclusion

17. I therefore request the Committee considers this statement of reasons and indicates whether it is satisfied with the grounds I have set out above to justify the absence of a consultation paper on my draft proposal.

David Stewart MSP
17 January 2012