

## **EAST AYRSHIRE COUNCIL**

### **COUNCIL MEETING - 27 APRIL 2006**

#### **REVISION TO THE SCHEME OF DELEGATION IN RELATION TO DEFECTIVE BUILDINGS**

##### **Report by Director of Development and Property Services**

### **1. PURPOSE OF REPORT**

- 1.1** To seek Council approval for revising the Scheme of Delegation in relation to Section 87 of the Civic Government (Scotland) Act 1982 as amended by Section 28 of the Building (Scotland) Act 2003 as it relates to Defective Buildings.

### **2. BACKGROUND INFORMATION**

- 2.1** The Building (Scotland) Act 2003 came into force on the 1<sup>st</sup> May 2005 and its progress from the Building Bill to its implementation has been reported previously to Development Services Committee. The 2003 Act built upon the statutory framework of the previous 1959 Act and similar delegated responsibilities have been automatically transferred to the Head of Planning and Building Standards with the exception of Section 28.
- 2.2** Section 28 was introduced to provide local authorities with discretionary enforcement powers in relation to buildings which have significant building defects. It may assist in projects contained within the Kilmarnock Town Centre Strategy. Where a local authority considers that a building has defects that require to be dealt with to prevent significant deterioration, it can serve a Notice on the owner of the building. The Act describes the defects that can be dealt with as those "which require rectification in order to bring the building into a reasonable state of repair having regard to its age, type and location". Buildings of such nature would fall outwith the scope of buildings which are separately considered as dangerous in terms of Section 29 and 30 of the Act.
- 2.3** The introduction of Section 28 now supersedes Section 87 of the Civic Government (Scotland) Act 1982 in relation to the power to issue a Repair Notice which was previously delegated to the Head of Protective Services. It has been agreed between both Neighbourhood Services and Development & Property Services that this enforcement power would be dealt with more appropriately by the Head of Planning and Building Standards.
- 2.4** The other subsections of Section 87 have not been repealed, therefore, for defective buildings the existing powers in the Civic Government (Scotland) Act to rectify immediately and recover costs by charging order under Section 108 remain. The link to entitlement to repairs grant in certain cases also remains and will be updated via the implementation of the Housing (Scotland) Act 2006.

### **3. POLICY IMPLICATIONS**

- 3.1** The introduction of the Defective Buildings Notice provides further enforcement powers for local authorities in relation to all buildings types and will compliment existing Building Standards powers in relation to dangerous buildings. However, given the existing enforcement powers under the Housing (Scotland) Act 1987 in relation to houses in disrepair along with the Housing grants scheme it will be necessary to devise a protocol on the enforcement roles, responsibilities and triggers for Building Standards, Housing and Environmental Health in relation to dilapidated and defective buildings. A protocol of this nature would allow a cross departmental approach to limit duplication within the enforcement process and ensure each service is aware of each others roles and responsibilities in a particular enforcement issue.
- 3.2** The proposals outlined in the report support the Improving the Environment Action Plan contained within the Community Plan.

### **4. FINANCIAL IMPLICATIONS**

- 4.1** Where a Section 28 Notice is issued on a building owner and the owner fails to undertake the works in accordance with the Notice within the requisite timescale, the local authority has the powers to carry out the work. Where the local authority has carried out the works to fulfil the Notice any expenses reasonably incurred during the process can be recovered from the building owner.

### **5. LEGAL IMPLICATIONS**

- 5.1** There are no direct legal implications as a result of this report.

### **6. PERSONNEL IMPLICATIONS**

- 6.1** There are no direct personnel implications as a result of this report.

### **7. RECOMMENDATIONS**

- 7.1** It is recommended that Council:
- (i) Note the introduction of the new enforcement powers;
  - (ii) Agree that the Head of Planning and Building Standards be authorised to issue Defective Buildings Notices and that the Scheme of Delegation be amended accordingly; and
  - (iii) Authorise the Head of Planning and Building Standards to prepare a protocol in conjunction with the Heads of Housing and Protective Services in relation to the issue of building related enforcement notices under the various statutes;

**James Lavery**  
**Executive Director of Development and Property Services**  
4<sup>th</sup> April 2006  
(DMCD/SA)

### **LIST OF BACKGROUND PAPERS**

1. Building (Scotland) Act 2003
2. The Building Standards (Procedure) (Scotland) Regulation 2004
3. The Civic Government (Scotland) Act 1982
4. Consultation on the introduction of new fee and procedure Regulations supporting the Building (Scotland) Act 2003 Committee Report dated 29<sup>th</sup> June 2004
5. The Review of Building Control Committee Report dated 6<sup>th</sup> May 2002
6. The Review of Building Control Committee Report dated 23<sup>rd</sup> October 2001

Anyone wishing to inspect the above papers please contact David McDowall on 01563 576749.

**Implementation Officer: Alan Neish**