

SURVEY QUESTIONS FOR DILAPIDATION BILL CONSULTATION

Introduction

1. What is your name?

Solace NI

2. What is your email address?

3. If you are providing a submission on behalf of an organisation or business please state its name.

NILGA / Solace NI

4. Please confirm that you have read the Northern Ireland Assembly Committee's Privacy Notice by clicking the button below.

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5. How would you like your submission to be published?

Yes. Publish but with my personal information and any content that could be used to identify me redacted.

Clauses 1 to 3 - Detriment to local amenity

Clause 1 - Maintenance notice

Clause 2 - Appeal against maintenance notice

Clause 3 - Breach of maintenance notice

Information:

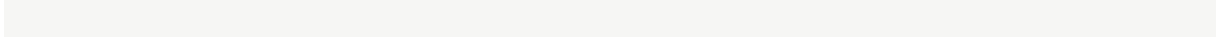
Clauses 1 to 3 allow district councils to serve a **maintenance notice** to require owners, occupiers and others with a relevant interest to take appropriate remedial action to deal with low level dilapidation and neglect. The clauses also deal with the appeals procedure and offences and penalties for breaches of a notice.

6. Do you agree that Clauses 1 to 3 will empower councils to tackle the issue of 'detriment to local amenity' (regarding buildings or other land in its district) that because of its condition is/are detrimental to the amenity of a part of the council's district or of an adjoining district - If not, why not?

No

If no, please explain.

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- It is recognised that it is the Department's intent that such provisions should be used proactively by Councils thereby ensuring that local areas are maintained to a higher standard than is presently legislatively required. Local government comments that that such efforts will require regulatory resources to successfully deliver these improvements. Whilst the legislation is written that Council 'may' take action and use discretion – in practice and with the interest of communities and Elected Members, Councils are more likely to find that there is an expectation that action will be taken, and would request that any new guidance reflects the discretionary nature of the legislation, and confirm that power will only be taken where the Council deems it expedient to do so.
- There needs to be a definition for '*detriment to local amenity*' i.e. the tipping point to act, otherwise this remains a subjective view that will remain to have conflict and Appeal as detailed in Clause 2 (2). Departmental guidance is required before legislation takes effect. Councils would welcome the opportunity to engage with The Department in the development of this guidance to be workable and effective.
- It is envisaged that such powers would be primarily used for lower priority sites to require the "proper maintenance of land". It is noted that this intended to replicate the powers available to local authorities in England and Wales under the Town and Country Planning Act 1990 ('the 1990 Act').
- Local government would welcome the views of the Department on whether this could be used to address invasive plant species e.g. Japanese Knotweed, Buddleia, etc. which can adversely affect the amenity and property of a neighbour. Local government would also welcome the replication of Section 330 of the 1990 Act as it will provide a power to require information as to interests in land, which would help address the problems faced in identifying owners and those responsible for dilapidated or dangerous buildings and structures. What does 'appears to a district council' mean? This is subjective –Also, what if no Interested Person can be established? There needs to be a process allowing action for situations where an owner cannot be found, like with the current 1878/1911 Belfast Acts, which is reported as actually working quite well together.
- Clause 1 (1) refers to 'building or other land' – does the definition of this include other public facing man-made structures e.g. retaining walls. The definition of '*building*' would be welcomed. In relation to including a wide-ranging definition of "building", while Councils accept that a definition may provide clarity, it is important to retain the flexibility already existing in the current Article 66 to enable enforcement action against any dilapidated man-made structure and not to restrict.
- Clause 1 is very broad – there is potential for councils to get drawn into civil and domestic disputes i.e. boundary walls/fences between properties. Clear definitions required.
- Is there a specified timeline for compliance with a Maintenance Notice or is this up to Councils? This could leave council open to appeal.
- Definitions 25(2) – Building includes any other structure – what is meant by 'any other structure'? Does this include freestanding walls for example? It needs to include any man-made structure, as fences, walls (of all sorts) hoardings and more are frequently in a detrimental condition but may not be dangerous (yet).
- Could a legal definition be provided for "any person of interest"?

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Please provide comment on your understanding of ‘detriment to local amenity’ in the context of this Bill.

- Clear Government guidance will be essential on this issue to ensure consistence of approach and avoid potential legal challenges which could well undermine the intent of the legislation. This guidance should reflect the learning from other jurisdictions where similar legislation has been implemented.
- The ambience (or pleasantness) of the neighbourhood being detrimentally affected by an offending entity is a useful comparator of terminology.
- Councils consider "Detrimental to amenity" means something (as yet undefined) that has a negative impact on the quality of life or the attractiveness of a place or area. This can refer to things like untidy or dilapidated buildings, overgrown vegetation, excessive noise or light, or anything else that detracts from the pleasantness or enjoyment of a neighbourhood.

Please comment on the maintenance notice, the appeal and action for breaches as appropriate.

- The maximum fine appears to be £2500, then an option of fixed penalty notice under Clause 19 for breach of Maintenance Notice. How is the building (or another amenity) remedied/ fixed? Will the expectation be that Councils act when owner doesn't? Obligation then rests with Councils to ensure cost recovery through the courts which has risk. Why can't court direct the owner to comply with the Notice and remove need for Councils to have to consider cost and expense of carrying out works themselves.
- Councils welcome the inclusion of a fixed penalty notice as a means of discharging the liability. However, the level set at £500 may be significantly less than the cost of making a property/ building or piece of land good and not act as sufficient deterrent or trigger to move towards compliance with the Notice. Cases may arise that the penalty is paid, yet the issue remains, thereby leading to the need for costly and time-consuming Court proceedings. The figure of £500 is much too low – it's effectively a get out of jail free card if it can only be applied once.
- A query remains, for example, where the interested party does not carry out works to remedy the issue and it continues, how then will a building remedied/ fixed? Councils would be concerned that there is an expectation to act when owner doesn't in each case. Obligation then rests with Councils to ensure cost recovery through the courts. This has risk. Councils would therefore support that the court directs the owner to comply with the Notice and remove the need for Council to have to consider cost and expense of carrying out works at the cost to the ratepayer.
- The issue of the owner of the detrimental entity being 'unable to be found' is important as this is frequently the case. Powers to carry out work in default and then to sell land to recover costs are essential.

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Clauses 4 to 6 – Serious detriment to local amenity

Clause 4 - Dilapidation notice

Clause 5 - Appeal against dilapidation notice

Clause 6 - Breach of dilapidation notice

Information:

Clauses 4 to 6 allow district councils to serve a **dilapidation notice** to require owners, occupiers and others with a relevant interest to take appropriate remedial action to deal with more serious dilapidation and neglect. The clauses also deal with the appeals procedure and offences and penalties for breaches of a notice or condition.

7. Do you agree that Clauses 4 to 6 will empower councils to tackle the issue of 'serious detriment to local amenity' (regarding buildings or other land in its district) that because of its condition is/are seriously detrimental to the amenity of a part of the council's district or of an adjoining district - If not, why not?

No

If no, please explain further.

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- There needs to be a definition for 'seriously detriment to local amenity' i.e. the tipping point to act, otherwise this remains a subjective view that will remain to have conflict and Appeal as detailed in Clause 5 (2). This should not be a mechanism to resolve civil disputes between neighbours etc.
- Clarification required on what does 'appears to a district council' mean? It is subjective and open to challenge.
- Clause 4 (1) indicates 'building' – does the definition of this include all other public facing man-made structures, e.g., retaining walls?
- Is there a specified timeline for compliance with a Dilapidation Notice or is this up to the Council? This could result in the Council open to appeal.
- There could be potential conflict with buildings in conservation areas.
- The onus for describing works required is on Councils. This should NOT be the case. The onus should be on the owner to take reasonable steps to secure their building and take all necessary steps to make safe. The steps proposed should be agreed with Councils rather than designed by the Councils.
- It must be recognised that in the current financial climate, many properties and frequently those that are neglected, are under the control of persons other than the owner. A robust piece of legislation and associated guidance will deal with this by defining who is responsible for such properties and what circumstances. In the experience of Councils, it is often possible to secure minor works such as boarding up on such sites, but much more difficult to secure more extensive building or demolition works. If you add powers to act (and recover costs) in the case of an unknown owner, and powers to sell land to recover costs generally, along with court orders made against owners for breach of any council enforcement order, this proposed bill is that robust legislation.
- A definition of "reasonable efforts" would be welcomed and will assist the Courts in circumstances when this is in dispute.
- There needs to be a mechanism to carry out works in default of an unknown owner and for the council to recover costs incurred – this is a very common scenario.

Please provide comment on the dilapidation notice, the appeal and action for breaches as appropriate.

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- 5 2(a) – There is concern expressed as to the definition of not seriously detrimental. Departmental guidance is required to prevent any ambiguity.
- 5 2(b) & (c) – onus should not be on council to specify work required to ensure the building is not seriously detrimental to local amenity The owner should be compelled to take all necessary steps to make safe.
- 5 2e – Guidance is required to fully assess the intention and consequences.
- 6 (1) should include the court making an order for the person to comply with Clauses (2) a and b also i.e. compel to carry out the works.
- 6 (1) and (3) Query around use of 4(3) which refers to 4 (2)(b). Is there a breach detailed for 4 (2)(a)?
- 6 (5)a – what is the statutory maximum?
- Councils will require detailed guidance and training on the recovery of costs and other options as budgets are extremely limited with possible long term financial outlay under these proposals. Councils need to be able to sell buildings/land/sites where owners don't pay, or where they cannot be found, to finance a 'rolling fund' that will allow this legislation to be enforced as envisaged.

Clauses 7 to 10 - Dangerous structures

Clause 7 - Dangerous structure notice

Clause 8 - Appeal against dangerous structure notice

Clause 9 - Breach of dangerous structure notice

Clause 10 - Emergency action

Information:

Clauses 7 to 9 allow district councils to serve a **dangerous structure notice** to require owners, occupiers and others with a relevant interest to take appropriate remedial action to deal with dangerous buildings and structures. The clauses also deal with the appeals procedure, fee provisions and offences and penalties for breaches of a notice or condition.

8. Do you agree that Clauses 7 to 9 will empower councils to tackle the issue of 'dangerous structures' (apart from if Clause 10 Emergency Action is to be used) regarding a building in its district that is in such a condition as to be dangerous, or is used to carry such loads as to be dangerous - If not, why not?

No

If no, please explain further.

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- Section 7 title refers to Dangerous structure, however, 7(1) then reverts to building as terminology. Are structures such as freestanding retaining walls included? Can clarity be given on definition 25 (2) relating to any other structure? What about dangerous places under the 1907 Act?
- 7 (1) - What does 'appears' mean as this is subjective terminology.
- 7 (2)b – “MUST” serve a notice – allows no discretion. What if an interested party cannot be identified or lives outside the UK jurisdiction? Onus for describing works required is on Council. This should NOT be the case – the onus should be on the owner to take reasonable steps to secure their building and take all necessary steps to make safe.
- 7 (6) – how do Councils reconcile the issuing of a Notice for a specified period to demolish part of a building if this contravenes Planning legislation i.e. conservation area? Councils will be giving conflicting direction to building owner.
- 7 (5) – Councils can restrict use. This may entail the Council costs to ascertain needs i.e. consultant costs. What about neighbouring buildings which may be affected? Can councils restrict occupation here?
- 7 (7) – it will be important to view the Departmental guidance on this matter before councils can comment further. Is this the total cost to the council, including technical staff, legal, etc.?
- 7 (8) – Does Section 30 of Amendments Act 1907 still apply for walls etc as it has not been revoked?
- The onus in this legislation is on Councils, whilst Central Government has better powers and resources in certain areas. For example, DfI Roads in dealing with retaining walls besides roadways. Reference should be made to article 51 of the Roads Order 1993.

Please provide comment on your understanding of 'dangerous' in the context of this Bill.

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The danger must be restricted to ensuring the safety of the public or to a public space. Dangerous Structures Notice should not apply to structures within their own or between private grounds/ parties that have no legitimate access to the public. These are civil issues and should be dealt with accordingly. Government guidance will be critical on this issue.

Please provide comment on the dangerous structure notice, the appeal and action for breaches as appropriate

- 8(2)(a) and (b) is unfair on Councils as 7(1) indicates that the building only needs to appear to the Council officer to be dangerous, but the appeal mechanism puts more onus on the council to defend and justify that decision. Councils will incur costs for structural engineers support etc.
- 8 (2) (d) – is guidance available to review with this consultation?
- 9(1) – agree with this to allow ‘court may order the person to comply’.
- 9 (5) - What is the fine level, and can a daily fine be imposed?
- An appeal period of 14 days, to which must be added the time to get a court date of up to six weeks might result in a dangerous structure sitting unresolved for up to 8 weeks.

Clause 10 (Emergency action)

Information:

Clause 10 (Emergency Action) deals with a building which is considered by a council to be in such a state or is carrying such loads as to be dangerous and immediate action should be taken to obviate the danger and allows a council to take the necessary steps for that purpose.

Clause 10 also requires that after seven days from the date when remedial works began, a council must give notice to at least one person with an interest in the building advising of the action being taken and that an appeal may be made to a Magistrates’ Court against that action, stipulating the grounds for appeal.

Clause 10 also deals with cases where an interested person sustains damage as a

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result of the exercise of a council's power under clause 10 - in such cases the person is entitled to compensation if a Magistrates' Court determines that the council was not justified in its exercise of the power (whether on an appeal under clause 10 or by a separate application under clause 10). Any disputes around compensation shall be determined by the Lands Tribunal or by an agreed arbitrator.

Clause 10 also allows a district council to charge a fee for exercising its powers under the clause. The fees may be specified in regulations to be made by the Department.

9. Do you agree that Clause 10 will empower councils to tackle the issue of 'dangerous structures' requiring 'Emergency Action' regarding a building in its district that is in such a condition as to be dangerous, or is used to carry such loads as to be dangerous and immediate action should be taken to remove the danger, and that the council may take whatever steps are necessary to remove the danger - If not, why not?

No

If no, please explain further.

- This Bill is written and structured in a way to make councils responsible for enforcement, prosecution and resolution. The Department should be aware that council cannot effectively deliver these emergency actions on its own. The DfI Roads and PSNI should be written into this legislation that ensures they activate to support the council in its emergency actions, such as road closures and permissions, signage, public information etc as required. Also, if the danger is a retaining wall that adjoins a public roadway, then DfI should be the pro-active lead agency by way of this Bill and the Roads Order 1993.
- It is critical that the Department include provision for instances when an owner cannot be identified within a certain period. This could be by way of a district council seeking a court order to undertake the works in default when an owner cannot be identified, or alternatively, a default power to carry out works without the necessity of a court order where a district council has not been able to locate an owner after reasonable enquiries.

Please provide comment on any aspect of the Emergency Action powers provided for in Clause 10, including the assessment the council must conduct; the notice of its intention to exercise the power; the proposal of a fee; the appeal; and the timescales

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- 10 (1) again uses the terminology of 'appears'. This implies that visual inspection by a council officer is adequate. This is not always the case in determining greater structural defects that may need to be examined more closely. Access may be required.
- 10(2) refers to initial steps to 'remove the danger' which may be fencing or hoarding to protect the public from the danger area. Close DfI support is required if the building is on a busy road or arterial route – this should be cited in the Bill.
- 10(1) states 'appears', yet 10(3) now states that an assessment must be undertaken. There is no detail over the depth or detail required in such assessment. 10 (4) then must notify the owner of actions and appeal. Given the appeal period in 10 (9) is 14 days, is council therefore prohibited in taking emergency action in this period? This has potential to delay any emergency action.
- 10(4) allows Councils to take emergency action to remove danger, will 10(5) permits a fee to be charged, the amount of which is yet to be determined. Given the potentially significant costs of remedial works, the fee is unlikely to act as an effective deterrent unless it is set at a substantial level.
- 10 (7) – all reasonable endeavours to identify person of interest – guidance is required to prevent this becoming a contentious issue.
- 10 (8) – grounds for appeal are wider than 10(1) where it only had to appear to the council officer. This does not support councils.
- 10(11) and (12) – the notion that compensation could be due to owners/ persons with interest will influence and increase the appeals against Notices. It will also make Councils more cautious in issuing such Notice.

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Clause 11 - Defective premises

Clause 11 - Defective premises notice

Information:

Clause 11 allows district councils to serve a **Defective Premises Notice** in circumstances requiring rapid remediation (e.g. a building which had an incorrectly installed staircase). This is to be used where the premises appear to be in such a state as to be "prejudicial to health or a nuisance."

The building does not have to be dilapidated or dangerous, but the council considers the problem needs to be tackled quickly.

The council may serve a notice stating that it intends to remedy the defective state of the premises and specifying the defects which it intends to remedy. Nine days after the Notice takes effect, a council may carry out whatever remedial works are necessary.

Clause 11 also allows the person on whom the notice was served to serve a counter notice within seven days of the defective premises notice taking effect stating that they intend to remedy the defects themselves. In this case the council is prohibited from taking any action unless the person fails to remedy the defects within a specified time or to a specified standard.

Clause 11 further requires that after seven days from the date when remedial works began, a council must serve notice on the person who received the original notice advising that an appeal may be made to a Magistrates' Court against the works, stipulating the grounds for appeal.

10. Do you agree that Clause 11 will empower councils to tackle the issue of premises in its district which are in a defective state, but there would be an unreasonable delay in remedying the defective state of the premises if the procedure under Part 7 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (statutory nuisance) were to be followed - If not, why not?

No

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- The consultation in 2016 and preferred option was for a new Bill to replace all previous and to provide a single source of powers and enforcement. This seems is not the case as we continue to have to confer with other legislation to consider and defend our choice of legislation used.
- The example used would be incorrect as defective staircase cannot be dealt with under statutory nuisance procedure. See R v Bristol City Council, ex parte Everett (13 May 1998) High Court, Queen's Bench Division, but this in turn asks the question as to whether this new provision will now deal with defective matters, such as defective staircase, that are not prejudicial to health or a nuisance, so is it effectively addressing safety issues?
- What is definition of “Defective State” Can the department advise what situations other than prejudicial to health or a nuisance will be dealt with under this provision.
- Many of the powers within Art 65 of Pollution Control & LG Order 1978 are re-enacted with minor changes and would be used by Councils where there is statutory nuisance requiring an urgent solution. To date this has not been used for dilapidated buildings as there are no occupants. Aesthetic appearance and or danger from derelict / dilapidated property would not be statutory nuisance.
- The legislation must ensure that its use in relation to statutory nuisance remains unhindered. In dealing with the wider scope, we believe that guidance should be issued on the situations to which this Clause will apply. Development of any such guidance should be undertaken in consultation with the enforcement authority.
- Has Art 63 of the Housing Order 1981 been considered alongside this legislation as this gives powers to our statutory housing provider, NIHE, to protect occupied dwellings from issues arising from unoccupied properties?
- Has any consideration regarding Empty Homes policy been given within DfC or DAERA?

If no, please explain further.

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Please provide comment on any aspect of the Defective Premises powers provided for in Clause 11, including the Defective Premises Notice, the timescales and the appeal.

- Most of the issues previously mentioned for other Notice types also applies here. It is essential that clear guidance is provided on the issue of any such Notice including definitions, scope and indicative timescales for remedy.

Clauses 12 – 15 Liability for Costs etc.

Clause 12 - Costs of district council

Clause 13 - Charge on land

Clause 14 - Costs of interested person

Clause 15 - Obstruction by occupier etc.

Information:

Clause 12 - Costs of district council - provides that where a district council has issued a maintenance notice, a dilapidation notice, a dangerous structure notice, a defective premises notice; or where a council has to take emergency action in order to remove danger, it may recover its costs from the relevant person where it has taken the necessary remedial action itself.

Clause 13 - Charge on land - provides for a district council to register a charge on the land in the Statutory Charges Register (Schedule 11 to the Land Registration Act (Northern Ireland) 1970) in respect of any costs incurred under clause 12 until such costs are recovered. It also provides for councils to register a Dilapidation Notice in the Register - to allow a property to be sold "with information" and binding the purchaser to the terms of the original notice where works have not been carried out.

Clause 14 - Costs of interested person - provides that where costs have been demanded under clause 12 a person who is receiving the rent for the land on behalf of another person would not be pursued for costs as it is not likely that they could be deemed responsible for causing a relevant nuisance.

Clause 15 - Obstruction by occupier etc. - provides that a court order may be made in a case where an occupier is preventing an owner from carrying out works to comply with a notice. It also provides for the associated offence and penalty.

11. Do you agree that Clauses 12 to 15 will empower councils to recover the costs which it incurs in so acting under section 3(1), 6(2), 9(2) or 10(2) (carrying out work) of the Bill, from the persons (who at that time have an interest in the land in question) as the council considers appropriate - If not, why not?

No

If no, why not?

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- 12 (1) - More guidance is required in suggested reasonable costs. Does this include staff time, structural engineer consultants, legal costs and all actual 'works' costs.
- Whilst there appears to be a mechanism in place for Councils to recoup costs for any works carried out in default, the process of pursuing the costs is foreseen as a lengthy and costly process. Charges against land is very ineffective unless a site is in an area where demand for development is high – neglected, vacant, dangerous buildings are often in low demand areas – when do councils get their money back?
- There are significant concerns regarding the potential financial impact that the proposed legislation will have on the Councils resources. Central government financial support is essential, at least at the start. The power to sell land to recover costs is also essential – to create a 'rolling fund' for the function – ensuring it is cost-neutral to the ratepayer.
- There are also concerns regarding the operational challenges likely to be faced when:
 - requesting information from Banks and other financial institutions.
 - The relevant owner is out of the jurisdiction. This should fall under the scope of 'owner cannot be found'
 - Where no owner can be found – this applies to 10-20% of dangerous structures – it is essential that there is provision to deal with these, and to recover costs.

Please provide comment on any aspect of the cost recovery actions provided for in Clauses 12 - 15, including costs of the district council; charge on land; costs of interested person and obstruction by occupier.

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- 12 (1) - Councils requires further guidance on what constitutes "reasonable costs". Does this include staff time, structural engineer consultants, legal costs and all actual 'works' costs? Without clear definitions, councils may face challenges in cost recovery and budgeting for enforcement actions.
- 12(4) – This clause presents a potential conflict. If a council fences off a dilapidated or dangerous building to protect public safety, and subsequently undertakes remedial works due to owner inaction, it is unjust to prohibit cost recovery. In cases where fencing remains necessary post-remediation (e.g. to secure a vacant site), councils should be entitled to recover associated costs.
- 12 (5) This clause may inadvertently restrict the use of emergency powers. Councils must retain flexibility to act swiftly in urgent situations without being constrained by procedural limitations that could delay intervention.
- 12 (6) and (7) means Councils must be prepared to justify its serving of Notice. This is in contradiction to most lead lines where it only needs 'to appear to the council that...:-
- Clauses 13 and 14 mean that council could have challenges in recovering its costs and this Bill becomes a burden to rate payers. Central Government should make a 'financial resource' available to support Councils to take actions that do not put Councils under financial stress. There is also the issue that cost recovery to Councils may only be realized on sale of a property/premises resulting in potentially long-term delay to be in receipt of any monies.

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Clauses 16 – 20 Miscellaneous functions of district councils

Clause 16 - Information

Clause 17 - Consultation with planning department

Clause 18 - Power of entry

Clause 19 - Fixed penalty

Clause 20 - Guidance

Information:

Clause 16 – Information - gives district councils the power to require information with regard to ownership, other persons having an interest in the premises, use to which the property is being put, etc. The clause also provides for two offences and penalties.

Clause 17 - Consultation with planning department (Heritage Sites) and relevant officers of DfC if the Heritage Site is a Historic Monument - requires a district council to consult relevant colleagues before issuing a notice in relation to a heritage site. It also provides that regulations may be made by the Department amending the definition of “heritage site” in subsection (2).

Clause 18 - Power of entry - provides for occasions where an authorised officer of the council may enter land in the council’s area for the purposes of the Act. There are various notice periods provided for in the Bill. It also covers compensation and inserts a relevant offence provision of obstructing an authorised officer.

Clause 19 - Fixed penalty - provides for a discretionary £500 fixed penalty to be issued by councils to discharge liability for conviction for breach of a maintenance notice and for failure to provide information without reasonable excuse. The Department may amend the fixed penalty amount by regulations - Schedule 1 makes further provision regarding fixed penalties.

Clause 20 – Guidance - provides that a district council must have regard to any guidance issued by the Department.

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12. Please provide comment on any of the miscellaneous functions of district councils to be found in Clauses 16 to 20.

Consultation with planning regarding heritage sites (Clause 16).

Clause 16- It is recommended a clause be added to state:

- ' A person who is required to undertake any work in response to a notice served under this Act must ensure they have obtained all necessary statutory approvals before the works are undertaken'.
- Clause 17 – States that Councils must consult with officers responsible for heritage sites. But fails to add for what purpose. Also, Councils experience is that many dangerous structure incidents occur outside normal working hours, often at night or weekends. Council officers foresee difficulties in being able to contact the “relevant officers of DfC if the Heritage Site is a Historic Monument”. This will be particularly problematic where there is an imminent danger to public safety and immediate action may be required. There MUST be suitable arrangements in place via legislation to facilitate this. It is recommended that Section 17 (1) is amended to introduce an additional requirement as follows:

- Before issuing a notice under this Act, a district council must consult
(a) 'The officers of the Council who exercise the Council's functions in relation to planning',

All other parts of section 17 would remain unchanged.

- This area of conflicting legislation is not resolved by this Bill. There will continue to be a conflict where council officers issue a Notice to demolish a dangerous building which is situated within a conservation area, whereas Planning legislation /DfC will dictate that a consent to demolish is required to be submitted for council consideration with a wider planning application for its replacement.
- Consideration should be given as to how 'dilapidation' will be measured. It is essential that this legislation does not provide a means to remove buildings of value, rather than retain and sympathetically restore them within Conversation Areas.
- Life safety should always be the primacy in the legislation.

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The powers of entry or an authorised officer of a district council (Clause 17).

- Clause 18 – Permits entry onto “land” at any reasonable time (except in emergency situations) subject to the consent of the occupier. Immediate access depends on owner consent. Officer can give prior written notification, but if still refused, or where owner cannot be identified, can this be supported by the Courts? The Planning Act provides that where consent is refused entry can be obtained by a warrant from a lay magistrate. Should this be considered here?
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- There is no definition of land – does that include buildings? What if Officers need access to a dwelling house. Can this be supported through the courts? Legislation i.e. Planning Act NI 2011 stipulates a notice period in those circumstances of 24 hours.
- Can lack of consent be viewed as obstruction? There is a criminal sanction for obstruction.

The fixed penalty provided for in Clause 18 when an authorised officer of a district council has reason to believe that a person has, in relation to land in the council’s district, committed an offence under section 3(2) (breach of maintenance notice), or an offence under section 16(4) (failure to provide information without reasonable excuse).

- Can a fixed penalty notice be repeatedly issued if the owner decides to pay each time, or is this provision limited to one FPN followed by legal proceedings or works in default.

The guidance for the time being issued by the Department for the purposes of this Act. A draft of the guidance, or a proposed revision of the guidance, must be laid before the Assembly.

- The full suite of Department guidance is required by council officers before a full and comprehensive response to this consultation can be made. The Department should engage with councils who have already taken extensive enforcement under the existing suite of legislation to draw upon their experiences before compiling guidance.
- Full guidance required along with template letters to ensure consistency of interpretation and implementation of The Act across all Councils is considered essential.

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Clauses 21 – 23 General procedural matters etc.

- 21. Notices
- 22. Appeal
- 23. Offences: defendant

Clause 21 – Notices - provides for general issues relating to notices issued under the Act by district councils, such as variation and withdrawal.

Clause 22 - Appeal - provides that an appeal against a notice issued under the Act will suspend that notice being appealed until the appeal is concluded or withdrawn. However, this does not apply to an appeal against works under clauses 10 or 11. On the determination of any appeal under the Act, the court must give directions for giving effect to its determination. A subsequent appeal to the County Court may be brought against the original appeal decision.

Clause 23 - Offences: defendant - provides for the procedures in cases where proceedings have been brought but the defendant ceased to be the owner/occupier before the end of the notice period.

13. Please provide comment on any aspect of the general procedural matters provided for in Clauses 21 - 23, including notices served under this Bill (Clause 21); appeals against a notice brought under this Bill (Clause 22) and for the procedures in cases where proceedings have been brought but the defendant ceased to be the owner/occupier before the end of the notice period (Clause 23).
General procedural matters Clauses 21 - 23.

- Clause 22 (1) effectively means that if an appeal is taken, all works specified by the Notice will have to await the outcome of the court. This therefore means that the timely removal of dangers is subject to court efficiency. This is OK for dilapidated sites, but less so for dangerous structures.
- Clause 23. In terms of offences, councils would support the compelling of those responsible to carry out the terms of the Notice and a daily fine to be applied for non-compliance. A daily fine would be most effective.

Clauses 24 – 25 Interpretation

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24. Meaning of “interested person” etc.

25. Other definitions

Information:

Clause 24 - Meaning of “interested person”, etc. - provides for the definition of “interested person” and also defines “owner” in relation to land.

Clause 25 - Other definitions - provides for definitions in respect of “building”, “land”, “authorised officer”, “use” and “the Department”.

14. Please provide comment on any aspect of the interpretation clauses provided for in Clauses 24 and 25, regarding the meaning of ‘interested person’ and other definitions.

Interpretation Clauses 24 and 25

- 25 (2) – Building includes ‘any other structure’. This is perhaps too broad. Could this be applied to such as a free-standing retaining wall, lamp post, railway gates, crown buildings, military facilities, mining facilities etc.? These are already controlled under appropriate legislation so important not to double regulate.
- 24 (2) should include receivers for the company that formerly had a interest in or ownership of the land.

Clauses 26 – 28 Supplementary

Clause 26 - Repeals and consequential amendments

Clause 27 - Savings

Clause 28 - Regulations

Information:

Clause 26 - Repeals and consequential amendments provides for the repeals set out in Schedule 2 and allows the Department by regulations to make consequential amendments.

Clause 27 - Savings - preserves the effect of a notice served under any legislation being repealed by the Act, therefore allowing a district council to complete works which it has begun under such a provision before its repeal.

Clause 28 - Regulations - provides the Department with a power, when making regulations under the Act, to make incidental, supplementary, consequential, transitional, transitory or saving provisions. Regulations under the Act will be subject

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to the negative resolution procedure unless they amend a fixed penalty amount or amend the definition of “heritage site” in which case they will be subject to the draft affirmative resolution procedure.

15. Please provide comment on any aspect of the supplementary clauses provided for in Clauses 26 to 28.

Supplementary Clauses 26 to 28.

- Clear guidance is required to support these clauses.
- There are elements of the legislation, albeit imperfect, that it is proposed to repeal, and that are absent from this new bill. These elements have been proven to work over many years. It is essential that these omissions are amended in a revised bill prior to the repeal of the existing suite of legislation.

Clauses 29 - 31 General Interpretation, Commencement & Short Title

Clause 29 - General Interpretation

Clause 30 - Commencement

Clause 31 - Short Title

Information:

Clause 29 - General interpretation - contains general interpretation provisions.

Clause 30 – Commencement - concerns the commencement of the Act.

Clause 31 - Short title - provides for the short title of the Act.

16. Please provide comment on any aspect of Clauses 29 – 31 regarding general interpretation.

General Interpretation Clauses 29 – 31.

- No comments at this time

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Schedules

Schedule 1 Fixed Penalties

Schedule 2 Repeals

Schedule 1 - Fixed Penalties sets out the form and content, etc. of fixed penalty notices issued under clause 19. It also contains information regarding the use of fixed penalty receipts by district councils and gives the Department powers to make regulations regarding the use of receipts.

Schedule 2 – Repeals lists the necessary repeals.

17. Please provide comment on any aspect of Schedule 1 regarding the fixed penalties, fixed penalty receipts and the power to make regulations regarding the use of receipts.

Schedule 1

- The use of any formal actions must have clear accompanying guidance provided to prevent inconsistencies of approach.
- Sch 1(7) – can further fixed penalty notices be issued if payment is received and paid for initial penalty notices?

18. Please provide comment on any aspect of Schedule 2 regarding the necessary repeals.

Schedule 2

- The use of any formal actions must have clear accompanying guidance provided to prevent inconsistencies of approach.

Additional Information/Comments

19. Please provide any additional information or comments on any aspect of the Bill that you feel is relevant.

Additional information or comments.

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Guidance Documents Referenced – The full suite of Department guidance is essential particularly on potentially subjective definitions such as “Detrimental to amenity”, to ensure consistency of approach and avoid potential legal challenges which could well undermine the intent of the legislation. This will also be required by Council officers before a full and comprehensive financial and resource appraisal to this consultation can be made.

Full guidance is required along with template letters to ensure consistency and correctness of interpretation across all Councils.

In cases of abandonment, if the costs to carry out the works in default exceeds a property/site value, and the property is not used, it would be useful for Councils to have the power to declare the property/site as abandoned and have it vested by the Council. The Council would also welcome the power of sale over same, if necessary; and any such vested land should be covered by general Local Government legislation, primary, Section 96 of the Local Government Act 1972.

With respect to escheat/ bona vacantia land, where property is deemed to fall under these rules and costs are owed to the Council, then subject to its discretion, a property should revert to that Council before reverting to the Crown, with that Council having the right to disclaim also.

Financial and Resource Implications – Given the absence of departmental guidance at this stage, the Council would have reservations that the proposed Bill will have significant financial and resource implications on the Council. However, as the consultation progresses, due consideration will be given to resource implications. This will include an assessment of the Council’s ability to recover costs related to default works, such as investigations, structural assessments, legal proceedings, and remedial actions undertaken to address issues with dilapidated and/or dangerous buildings.

To enable a full and comprehensive financial and resource appraisal, Council officers require access to the complete suite of departmental guidance. This should include the following:

- Detailed operational guidance
- Template letters and documentation
- Clear definitions and scope of responsibilities
- Evidence from other jurisdictions of the resource and financial impact of similar legislation.

Such guidance is essential to ensure consistency of interpretation and implementation across all Councils.

Proposed Additions and Amendments

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20. Please provide information on any potential amendments that you feel would enhance the Bill and the rationale for those.
Information on any potential amendments

Almost done...

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