

**Correspondence from Shelter Scotland, Scottish Empty Homes Partnership,
Scotland's Towns Partnership and Rural Housing Scotland**

Compulsory Sale Order for long term empty properties

Shelter Scotland, Scottish Empty Homes Partnership, Scotland's Towns Partnership and Rural Housing Scotland support much of the Land Reform Bill and its aim to ensure Scotland's land is better used in the public interest. The Scottish Empty Homes Partnership is funded by the Scottish Government and hosted by Shelter Scotland. We work with councils and their partners to help them develop policies and processes to bring private sector empty homes back into use.

We believe the Land Reform Bill would be greatly strengthened with the inclusion of a new power to enable local authorities to bring more long term empty private properties back into use. We want to see a Compulsory Sale Order (CSO) power for long term empty properties and the mechanism for communities to compel local authorities to take action over long term empty properties¹.

Local authorities report that current compulsory purchase order legislation is inappropriate for this purpose and as a result they do not use it to bring long term empty properties back into use. Introducing a Compulsory Sale Order would help local authorities and communities tackle the long term empty properties that blight communities which can currently be extremely difficult to remedy. It would do this by giving local authorities a legal right to force a long term empty property onto the open market for sale with the purpose of securing its reuse.

We would want such a power to have an emphasis on long term empty buildings in both urban and rural locations where the owner has demonstrated no realistic plans to reuse the property over a prolonged period of time. This power would only be used as a last resort where other mechanisms to bring the properties back into use have failed. The best practice process promoted by the Scottish Empty Homes Partnership has several interlinked steps, the last of which would be the use of this enforcement power.

There are over 27,000 long term private sector empty homes in Scotland. The challenge of meeting current and existing housing needs across Scotland is a significant one and bringing empty homes back into use can contribute in a very practical and effective way. A Compulsory Sale Order for Empty Buildings could help bring some of the worst of these empty homes back into use as well as having the potential to be applied to empty buildings with residential or commercial potential that could reinvigorate town centres and rural communities. While a CSO would only be required as a last resort, it would be an extremely effective tool for use by Empty Homes Officers in local authorities across Scotland who need a range of powers in order to tackle this problem.

¹ This recommendation is an augmentation of a CSO proposal for vacant and derelict land that was in the Land Reform Review Group's Final Report. We see a value in using the principle of this proposal to develop a Compulsory Sale Order to tackle long term empty properties. Please see the attached Appendix for more details.

We believe that local communities should be a key player in initiating the use of such an enforcement tool. The power to use such a tool should rest with local authorities, for use after all voluntary efforts have been made to help the owner to make the best use of their property, and with local communities who could petition their local authority to consider use of such a power.

We believe a Compulsory Sale Order for Empty Buildings is in line with the spirit of the Land Reform process, to enable Scotland's land and property to benefit the whole of society rather than just land and property owners. Failing to act on Empty Homes in this Bill would, we believe, be a missed opportunity. We ask that the committee recommend that such a power be included in the Land Reform Bill at Stage 2.²

Appendix - Compulsory Sale Order for Empty Buildings

Background

We believe the Land Reform Bill would be greatly strengthened with the inclusion of a new power to enable local authorities to bring more long term empty private properties back into use. Local authorities report that current compulsory purchase order legislation is inappropriate for this purpose and as a result they do not use it. We therefore want to see a Compulsory Sale Order (CSO) power for long term empty properties introduced through this bill and for the Bill to include a mechanism for communities to compel local authorities to take action over long term empty properties.

There are over 27,000 long term private sector empty homes in Scotland. A Compulsory Sale Order for Empty Buildings could help bring some of the worst of these empty homes back into use. It could also be applied to empty buildings with residential or commercial potential that could reinvigorate town centres and rural communities.

Housing Re-use Power and Compulsory Sale Order Power

The Scottish Empty Homes Partnership has previously recommended the introduction of a 'Housing Re-use Power' for councils which would allow them to either lease or force the sale of long term empty homes as a last resort and under strict conditions. This proposal was endorsed by the Land Reform Review Group in their final report.

² Shelter Scotland and the Scottish Towns Partnership are also part of a wider group of organisations including Community Land Scotland and the Development Trust Association Scotland who are in favour of the introduction of a full Compulsory Sale Order power as proposed by the Land Reform Review Group but expanded to include long term empty property as well as vacant and derelict land. These additional groups have not signed up to this letter as they are looking for a broader ranging Compulsory Sale Order power. The signatories of this letter are not opposed to these wider aims but see a Compulsory Sale Order Power for empty buildings as a useful starting point.

The Land Reform Review Group also made a recommendation for the creation of a Compulsory Sale Order which would enable councils to force vacant and derelict land on to the open market if it remains unused for 3 years³.

The Scottish Empty Homes Partnership is in favour of the adoption of this recommendation by the Land Reform Review Group for a Compulsory Sale Order power provided that any definition of vacant and derelict land also included vacant and derelict buildings. We believe such a power would achieve much of what we have been seeking through our proposal for a Housing Re-Use Power, namely a change of ownership where properties have got 'stuck' and owners are missing or not engaging.

Change of ownership has time and time again proven the key to unlocking many an empty homes case and a power that councils can realistically use at low cost would be invaluable in tackling some of the worst problem empty homes. This power also puts the cost of acquiring the property in the hands of the purchasing owner, rather than the council making it a less onerous undertaking for councils.

The key for the Partnership is that local councils have an enforcement tool that they feel is viable in terms of cost and effectiveness. While we will continue to advocate that enforcement is used as a last resort, we believe it is important that councils have an effective enforcement power as a final option for long term problem empty homes where incentives and negotiation fail.

We understand that the recent Land Reform Review Housing and Regeneration consultation run by the Scottish Government which considered this proposal raised concerns about the complexity of a Compulsory Sale Order Power for Vacant and Derelict Land and its potential overlap with existing compulsory purchase powers. However, the Sounding Board's report on the consultation also found:

"Some saw merit in a CSO being used for small plots that blighted communities and in particular derelict or empty buildings. In the case of a building, the end use would be clear and would directly support an increase in housing supply.

It was felt that a CSO in some instances could be a powerful tool for communities,..."

It is for these situations that we would ask the committee to take another look at the potential to craft a Compulsory Sale Order Power specifically aimed at addressing empty buildings and including a mechanism that would empower communities to ask local councils to take action with regards to empty buildings blighting their neighborhoods.

Compulsory Sale Order Power for Empty Buildings

An overview of a scaled down Compulsory Sale Order Power specifically for empty buildings would be:

³ The Land of Scotland and the Common Good. Report of the Land Reform Review Group.
<http://www.gov.scot/Resource/0045/00451597.pdf>

- A long term empty property is manifestly causing problems in a neighbourhood.
- The local authority seeks to engage with the owner, offering advice and assistance; possible access to funding to bring it up to standard if needed; and access to other parties who might help with its re-use.
- If all of these approaches fail to resolve the problem, the local authority seeks to use the powers outlined here, by first making a declaration that the property is long term empty and that the best way to address the problems it is causing is to secure its re-use through sale on the open market.
- The owner then is given a final specified period to bring the property into use.
- If and when that period elapses, the council then has the power to apply an order to place the property for sale on the open market (as described in the original CSO proposal in the Land Reform Review Group's report with set timeframes).
- At the point of the council declaring the property to be long term empty and at the point of receiving notice that the property is to be put up for sale the owner can apply to the court or another form of tribunal to challenge that process.

In England, Empty Homes Officers have recourse to both Empty Dwelling Management Orders (to take over the lease of an empty home for up to 7 years), and Enforced Sale (under the Law and Property Act 1925). There are issues with both of these powers including long bureaucratic processes (Empty Dwelling Management Orders) and the requirement for there to be a debt against the property (Enforced Sale) that make them less than desirable for the Scottish context. However what they do offer, that current Compulsory Purchase legislation at the moment does not, **are powers that councils are actually willing to pursue for single empty homes.** The end goal of course is to not have to use the power. However, having a power that the council feels confident it could follow through on if needed has been shown to make negotiation and problem solving with owners more effective.

Feedback from the Scottish Empty Homes Officer Network

A consistent theme in the feedback the Scottish Empty Homes Partnership has received from councils has been the desire for effective empty homes enforcement tools in Scotland.

90.9% of this year's survey responders indicated that a specific Scottish empty homes enforcement tool would be 'very useful' (63.6%) or 'useful' (27.3%).

This year we have sought to support councils who are looking to use existing powers, namely the Compulsory Purchase Order. However, the message we are receiving from councils continues to be that they don't think the existing tools are fit for purpose. **They raise with us concerns about both the cost, timescales and risks of pursuing a Compulsory Purchase Order (CPO).**

"Time taken to carry out searches/advertise/ negotiate with owners if we can find them/prepare a statement of reason / liaise/satisfy with Scottish Gov etc. The

process on average takes more than 2 years which can be delayed further if owner appeals the CPO or appeals the valuation and we have to go to a PLI or a Land Tribunal. The whole process in some cases have taken up to 5 years.” Duncan Thomson, Group Manager – Private Sector, Housing & Regeneration Services, Glasgow Council.

“**[REDACTED TEXT]**, a C listed building in the Leslie Conservation Area has been empty for at least 25 years. Council officers were very reluctant to take action but I eventually got Fife Council to agree to go for a CPO in 2006, having been asking since 1992. This request got lost with the Scottish Executive and then the Scottish Government for 6 years despite repeated complaints via an MSP. Even when a reporter was appointed it took over a year to actually have the hearing **[REDACTED TEXT]**. The CPO was finally granted in February 2015 but the property is still not actually for sale. It is in a very poor condition, basically only the walls and roof remaining. Nobody has been helped by the multiple delays in reaching this stage.” – Cllr. Fiona Grant, Fife Council

We survey Scotland’s empty homes practitioners each year in April and May. In this year’s survey we asked councils if they had used enforcement as a method to bring empty homes back into use. **Only one council reported having used current CPO powers to bring a long term problem empty property back into use.** This is despite the fact that a number of councils have highlighted to the Partnership outside the survey process that they have lists of ‘no hope’ empty homes where the property is causing issues in the community, the owners are non-engaging or non-contactable. They report that even for these cases councils are not prepared to pursue Compulsory Purchase due to the perceived risks around cost, timescales and the potential of ending up as owners of a property with no set end use.



Empty Property in East Ayrshire. Empty since 2008. **[REDACTED TEXT]**.



Empty Property in Perth & Kinross. Unknown length of time empty. Owner can’t be found.

Example case stories from Empty Homes Officers

“A first floor flat in the centre of town which has been empty for 14 years. The elderly resident of the ground floor flat struggles to cut the grass on the entire garden whereas she is only responsible for half of the rear garden. Lengths of guttering are hanging off the building which should be common repairs. When I last stopped to look at this flat, a builders van pulled up to ask if the property was on the market. There is strong demand for this type of property from either a developer or an owner occupier”

“A cottage is adjacent to a large detached house. It has been empty for 18 years and is in serious disrepair. There would be significant demand for this property as it is close to the River”

“A property is in the centre of a small village and has broken windows and is in a poor state of repair. It is causing problems to the neighbouring owners. The owner who lives in USA bought the property for development purposes and applied for planning consent to demolish the cottage and build 2 new properties on the site. The consent has now lapsed.”

“The property was a private let and as far as I can tell from the documentation it has been empty since 2008. We have lettered the owner constantly and went to the extent of having a letter hand delivered by an officer from another local authority. At the time of the delivery of the letter the owner spoke to the officer, she explained that her husband dealt with all the finances and he works away. She said that the property was left in a poor state by the previous tenant and they haven’t done anything with it. I have sent the empty homes information but have still had no response. Building control have advised that they do not have any powers available to deal with this property.”

“We had an issue with a property that had been empty since 1999 and was in a serious state of disrepair. The council spent thousands of pounds repairing the property and stopping it from causing further damage to the two adjoining properties. Thousands of officers’ hours were also used chasing the owner and trying to deal with the state of the property. The council were reluctant to use CPO as they had already spent a large amount of time and resource on the property, and has also had bad experiences using it previously, when the order had not been granted, despite all the effort put in.”

Why councils are not using current Compulsory Purchase Orders

In this year’s survey, for those who had not used the current Compulsory Purchase Order but who indicated an empty homes enforcement power was needed, we asked ‘What has stopped you using the current Compulsory Purchase Order?’ Answers included:

- ‘Lack of resources, too time consuming’

- 'Local authorities don't have the budget to CPO'
- 'Legal services don't seem to consider this a clear cut option'
- 'Cost and time constraints'
- 'Lack of funding and legal expertise'
- 'Lack of knowledge on how to implement this and internal reluctance to pursue this'

Through discussions with Empty Homes Officers more specific issues with using Compulsory Purchase have also been raised including:

- No clear guidance on what constitutes reasonable efforts to contact or engage with an owner before pursuing Compulsory Purchase.
- The requirement to pay market price to the owner represents a direct cost to the council which may not be able to be recouped.

Councils would find the following enforcement tools useful

- 'Glasgow believe that the power of Enforced sale would be invaluable'
- 'Enforced sale would be useful'
- 'Like the idea of the Specific Scottish Empty Homes Enforcement Tool'
- 'A compulsory sale order – may be useful for cases of 'empty home hoarders'
- 'Something that could be used as a stepping stone to CPO process, Anything that would assist the legal process when owner deceased and no identified beneficiary or someone dealing with estate.'
- 'It is still too early for me to pinpoint this – however, I have already come across 4+ properties with large council tax arrears where owners are unresponsive.'
- 'Simplified EDMO' [Empty Dwelling Management Order – English Power]
- 'Maybe the Scottish Government making it clear that they fully endorse the use of CPOs to aid tackling the empty homes problems and maybe doing something to reduce the timescales for a CPO and therefore making it a more cost effect and user friendly tool'

We hope the Committee will consider this evidence from council's which clearly indicates the need for a new power to support their work to get some of the most difficult long term empty homes back into use. This will not only provide much needed additional housing, but will also improve and help regenerate local areas.