

Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill

[AS INTRODUCED]

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ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 39-EN. A Policy Memorandum is printed separately as SP Bill 39-PM.

Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to amend the Building (Scotland) Act 2003 to provide for expenses incurred by local authorities in the repair, securing or demolition of defective or dangerous buildings to be recovered by way of charging order.

1 Expenses recoverable using charging orders

The Building (Scotland) Act 2003 (asp 8) is amended as follows—

(a) in section 44—

(i) at the end of subsection (1) insert “or makes a charging order under section 46A”,

(ii) at the end of subsection (2)(b) insert “or the whole of the repayable amount due under the charging order”,

(b) after section 46 insert—

“Charging orders

46A Charging orders

(1) A local authority entitled to recover any expenses under section 28(10)(b), 29(2) or (3) or 30(4)(b) that are qualifying expenses may make in favour of itself an order (a “charging order”)—

(a) specifying the building concerned and the repayable amount calculated in accordance with section 46C, and

(b) providing that the building concerned is charged with the repayable amount.

- (2) Unless otherwise required by an order made under subsection (3), charging orders, and discharges of charging orders, are to be in such form as the local authority may determine to give effect to, and state the information required by, Schedule 5A.
- 5 (3) The Scottish Ministers may by order specify the form which charging orders and discharges of charging orders must be in.

46B Qualifying expenses

- (1) Qualifying expenses are expenses recoverable by a local authority under section 28(10)(b), 29(2) or (3) or 30(4)(b) and which relate to—
- 10 (a) a defective building notice under section 28(1) or, as the case may be, a dangerous building notice under section 29(6), in either case served after the commencement of this section and section 46A(1), or
- (b) notice under section 29(3) or, as the case may be, works under that subsection without notice, in either case given or carried out after such
- 15 commencement.
- (2) Where a charging order is made in respect of expenses incurred by a local authority in demolishing a building, references in this section, sections 46A, 46C, 46D and 46E and Schedule 5A to a building are to be read as references to the site of the demolished building.

46C Repayable amount

- (1) The repayable amount is the lower of—
- (a) the total of the qualifying expenses and any sum recoverable under subsection (2), and
- (b) any amount determined by the local authority.
- 25 (2) A local authority may, in addition to any qualifying expenses, recover from the owner of the building concerned—
- (a) the amount of any fee payable in respect of registering a charging order or the discharge of a charging order,
- 30 (b) any administrative or other expenses incurred by it in connection with the charging order or discharge, and
- (c) interest, at such reasonable rate as it may from time to time determine, from the date when a demand for payment is served until the whole amount is paid.

46D Core terms of charging orders, repayment and discharge

- 35 (1) A charging order must provide—
- (a) for the repayable amount to be paid in 30 annual instalments falling due on the same date, to be specified in the charge, in each calendar year,
- (b) that in default of such payment each instalment, together with any amount recoverable in respect of that instalment under section 46C(2)(a)
- 40 or (b), is to be separately recoverable as a debt, and

(c) that if immediately after the thirtieth instalment falls due any balance of the repayable amount remains unpaid, that balance is immediately due for repayment and is recoverable as a debt.

5 (2) The owner of any building subject to a charging order may at any time redeem the repayable amount early by paying to the local authority the repayable amount in full or such lower sum—

(a) as the owner may agree with the local authority, or

10 (b) failing such agreement, as the Scottish Ministers may determine either generally by order made under subsection (4) or specifically in relation to that charging order.

(3) The local authority must, on receiving—

(a) payment in full of the repayable amount, or

(b) a sum redeeming the repayable amount under subsection (2),

register a discharge of the charging order in accordance with section 46E(5).

15 (4) The Scottish Ministers may by order make such further provision as they think fit about the repayment or early redemption of amounts repayable under a charging order.

46E Registration

20 (1) The local authority must register a charging order in the appropriate land register.

(2) A registered charging order is conclusive evidence that the charge specified in it has been created in respect of the building specified in it.

(3) A registered charging order is enforceable at the instance of the local authority against any person deriving title to the charged building.

25 (4) But it is not enforceable against—

(a) a third party who acquires right to the charged building (whether title has been completed or not) in good faith and for value before the charging order is registered, or

(b) any person deriving title from such third party.

30 (5) The local authority must register a discharge of the charging order in the appropriate land register as soon as reasonably practicable after a charging order has been discharged.

(6) A registered discharge of a charging order is conclusive evidence that the charge concerned has been discharged.”,

35 (c) in section 47—

(i) at the end of subsection (1) insert—

“(h) any charging order made under section 46A.”,

(ii) in subsection (3)—

40 (A) after “applies” insert “, or a charging order made under section 46A or any decision in connection with such a charging order.”,

(B) after “the date of the decision or notice” insert “, or the charging order or connected decision,”,

(iii) after subsection (3) insert—

“(3A) On any appeal made by virtue of subsection (1)(h) no question may be raised which might have been raised on an appeal against the original notice or decision requiring the execution of the works to which the charging order relates.”,

(iv) in subsection (4), after “applies” insert “, or a charging order made under section 46A or any decision in connection with such a charging order,”,

(d) in section 54—

(i) in subsection (5), after “except” insert “section 46D(4),”,

(ii) in subsection (6), after “Act” insert “, or under section 46D(4),”,

(e) after Schedule 5 insert—

“SCHEDULE 5A

(introduced by section 46A)

CONTENTS OF CHARGING ORDERS AND DISCHARGES

Charging orders

1 A charging order must be evidenced by deed.

2 A charging order must contain the following information—

(a) the postal address of the building to be charged and a full description to enable registration in the appropriate land register,

(b) the name and address of the local authority making the charging order,

(c) the repayable amount as at the date of the charging order,

(d) the amount of the annual instalment as at the date of the charging order,

(e) the date (after the date of the charging order) by which the first instalment is to be paid,

(f) a statement that the number of annual instalments is 30,

(g) the rate of interest as at the date of the charging order,

(h) the formula by which the rate of interest is calculated,

(i) any applicable provision for varying the rate of interest, and

(j) any applicable provision for varying the repayable amount to reflect changes in the rate of interest or other alterations in the interest payable.

3 A charging order must state—

(a) that the building is charged with the repayable amount payable in instalments as specified in the information referred to in paragraph 2, and

(b) the action that the local authority may take if any instalment, or any outstanding balance after the thirtieth instalment has been paid, is not paid by the due date.

4 A charging order may include such other minor or incidental provisions as the local authority thinks fit.

Discharges

5 A discharge must be evidenced by deed.

6 A discharge must contain the following information—

- 5
- (a) the postal address of the building,
 - (b) the name and address of the local authority,
 - (c) the date of the charging order, and
 - (d) the title number and the date of registration in the appropriate land register and the date on which the charging order was registered in that register.”.

2 Commencement

10 (1) Section 1(b), to the extent that it inserts sections 46A(2) and (3) and 46D(4), this section and section 3 come into force on the day after Royal Assent.

(2) The remaining provisions of this Act come into force at the end of the period of 6 months beginning with the day of Royal Assent.

3 Short title

15 The short title of this Act is the Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Act 2014.

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