

BUILDINGS (RECOVERY OF EXPENSES) (SCOTLAND) ACT 2014

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

3. The Act amends the Building (Scotland) Act 2003 (“the 2003 Act”) to provide the framework for local authorities to make charging orders for recovery of expenses incurred where local authorities have carried out work under the 2003 Act.
4. The principal reference points for the amendments to the 2003 Act are Part 3 (sections 25, 26 and 27) and Part 4 (sections 28, 29 and 30) of the 2003 Act, which deal, respectively, with matters concerning compliance and enforcement, and defective and dangerous buildings. It may therefore be useful, by way of context, to provide some detail on those sections.
5. In the 2003 Act, the term “building” has the meaning given in section 55 of that Act.
6. Under section 25 of the 2003 Act, where the Scottish Ministers consider that, for any of the purposes specified in subsection (1), those buildings to which building regulations apply ought to comply with a provision of the building regulations, they may direct local authorities to take action to secure that those buildings do comply. If required to do so by such a direction by the Scottish Ministers, the local authority must (and if not required to do so, the local authority may) serve on an owner of an identified building a “building regulations compliance notice” identifying the provision of the regulations with which the building does not comply, any particular steps the owner must take, when the notice takes effect and the date by which the building must be made compliant with the provision of the regulations. Where the owner has not complied with the notice, then under section 25(7)(b) the local authority can carry out any necessary work to secure compliance, and can recover from the owner any expenses reasonably incurred by it in doing so.
7. A verifier, appointed under section 7 of the 2003 Act, may impose a continuing requirement under section 22 of the 2003 Act on an owner of a building to ensure that, after completion of a building, the purposes of building regulations are not frustrated. Under section 2 of the 2003 Act, the Scottish Ministers can, by regulations, also impose a continuing requirement, including the imposition of such a requirement in respect of an existing building. Under section 26, where it appears to a local authority that the owner of a building is failing to comply with a continuing requirement imposed on the owner, the local authority can serve a “continuing requirement enforcement notice”, identifying the continuing requirement concerned, any particular steps the owner must take, when the notice takes effect, and the date by which the steps necessary to comply with the continuing requirement must have been taken. Where the owner has not taken the required steps to comply with the notice by the specified date, then under section 26(3)(b) of the 2003 Act the local authority can undertake any necessary work to secure compliance with the notice, and can recover from the owner any expenses reasonably incurred by it in doing so.

*These notes relate to the Buildings (Recovery of Expenses) (Scotland)
Act 2014 (asp 13) which received Royal Assent on 24 July 2014*

8. Under section 27, where it appears to a local authority that work which requires a building warrant has been carried out without, or not in accordance with, a building warrant or that a limited life building has not been demolished by the expiry of the period of its building warrant, the local authority can serve on the relevant person a “building warrant enforcement notice”. This must set out when the notice is to take effect. It can also set out the steps which are to be taken by the person on whom the notice is served to comply with it. In addition, where it appears to the local authority that work requiring a building warrant is being carried out without a building warrant (or, where a building warrant has been granted, not in accordance with that warrant) the notice can require the person on whom it is served to suspend work (other than work to comply with the notice) until the notice has been complied with. The term “relevant person” is defined in section 27(3) and includes the owner of the building. It might also include, for example, a tenant. Where the relevant person has not complied with the notice by the date specified in the notice, under section 27(7)(b) the local authority can carry out any necessary work to secure compliance with building regulations made under section 1(1) of the 2003 Act or the notice, and can recover from that person any expenses reasonably incurred by it in doing so.
9. [Section 28](#) enables a local authority to serve on the owner of a building a “defective building notice” requiring the owner to rectify such defects in the building as the notice may specify. The notice sets out the defects concerned, any particular steps the owner must take, and the dates by which the owner must have begun and completed the work required by the notice. Where the owner has not carried out the work, then under section 28(10)(b) the local authority can do so, and can recover from the owner any expenses reasonably incurred by it in doing so.
10. Where it appears to a local authority under section 29(1) that a building (a “dangerous building”) constitutes a danger to persons in or about it or to the public generally or to adjacent buildings or places then the local authority must carry out such work (including, if necessary, demolition) as it considers necessary to prevent access to it and to protect the public (subsection (2)). It can also recover from the owner any expenses reasonably incurred by it in doing so. Subsection (3) recognises that it may not be possible to give prior notice to the owner, and that the local authority may require to take urgent action. In that situation, it can also recover from the owner any expenses reasonably incurred by it in carrying out such work as is necessary to reduce or remove the danger.
11. In terms of section 29(6), the local authority must serve a dangerous building notice under that subsection except where the danger has been resolved in consequence of work carried out under section 29(3).
12. Section 30 of the 2003 Act sets out what is to be contained within a “dangerous building notice”, identifying the work for the repair, securing or demolition of the dangerous building which the local authority considers necessary to remove the danger, and the dates by which the owner must have begun and completed the work required by the notice. Where an owner has not carried out work by the dates specified for compliance under the notice, subsection (4) enables the local authority to carry out the required work and to recover from the owner any expenses reasonably incurred by it in doing so.