



# Civic Government (Scotland) Act 1982

## 1982 CHAPTER 45

### PART VIII

#### BUILDINGS, ETC.

#### **87 Local authorities' powers in relation to buildings in need of repair.**

- (1) A local authority may, by notice in writing, require the owner of any building in their area to rectify such defects in the building as are specified in the notice being defects which require rectification in order to bring the building into a reasonable state of repair, regard being had to its age, type and location.
- (2) For the purposes of this section, any object or structure fixed to a building or forming part of the land and comprised within the curtilage of a building shall be treated as part of the building.
- (3) Where it appears to a local authority to be necessary in the interests of health or safety or to prevent damage to any property that they should repair immediately a building in their area, they may without prior notice rectify such defects in the building as could have been specified in a notice under subsection (1) above had such a notice been served and any person authorised by them may, on their behalf, for these purposes, enter the building and the land pertaining thereto.
- (4) The local authority may recover from the owner of the building the expense of anything done by them under subsection (3) above or, where there is more than one owner, apportion such expense among them and recover from each the appropriate sum, but may remit any sum or any part of any sum due to them under this subsection as they think fit.
- (5) A person who, in compliance with a notice served under subsection (1) above or under section 20 of the <sup>M1</sup>Public Health (Scotland) Act 1897, carries out work on a building which is, for the purposes of [<sup>F1</sup>Part V of the Housing (Scotland) Act 1987], a house shall have the same entitlement to loans and grants as he would have had if the notice had been served and to the extent that it could have been served under section [<sup>F1</sup>108 of that Act].

*Status: Point in time view as at 01/10/1992.*

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- (6) In this section, “local authority” means the district or islands council except that in the case of districts situated within the Highland, Borders or Dumfries and Galloway region it means the council of that region.

#### Textual Amendments

- F1** Words substituted by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), ss. 335, 339(2), [Sch. 23 para. 28\(1\)](#)

#### Marginal Citations

- M1** 1897 c. 38.

## 88 Installation of pipes through neighbouring property.

- (1) The sheriff may, on summary application by an owner of a part of a building who requires, but has been refused or otherwise has been unable to obtain, the consent of any other person for—

- (a) the installation—
- (i) on the outside surface of any external wall or roof of the building;
  - (ii) in, through or under any part of the building which is held in common by the owner and the other person or any land pertaining to the building which is so held;
  - (iii) in, through or under any part of the building owned by the other person or any land pertaining to the building which is so owned
- of such pipes or drains as are necessary for the purpose of water supply to, or the soil, waste or rainwater drainage or the ventilation in connection with such drainage of, the owner’s part of the building;
- (b) the making of connections with common water supply pipes, or soil, waste or rainwater drains or drain ventilating pipes; or
- (c) access to the pipes or drains referred to in paragraph (a) above for the purpose of their maintenance and repair,

subject to subsection (2) below, grant warrant authorising such installation, making of connections or access.

- (2) The sheriff shall not grant warrant under—
- (a) subsection (1) above unless it appears to him that it is reasonable that the installation be carried out, the connections be made or, as the case may be, the maintenance or repair for which access is applied for under that subsection, be done;
  - (b) under paragraph (a) or (b) of that subsection or, except for repair in an emergency, paragraph (c) of that subsection to an owner who has been otherwise unable to obtain consent unless it appears to him that the owner’s request for consent was made in writing to the other person at least 28 days before the application under that subsection.
- (3) The sheriff may—
- (a) make a warrant granted by him under this section subject to such conditions as he thinks fit;
  - (b) make such award of expenses as he sees fit in relation to an application under this section.

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- (4) An appeal shall lie to the Court of Session from the decision of the sheriff under this section.
- (5) This section is without prejudice to any requirement to obtain approval under or any other obligation imposed by or by virtue of the Building (Scotland) Acts 1959 and 1970, the <sup>M2</sup>Sewerage (Scotland) Act 1968, the Town and Country Planning (Scotland) Acts 1972 to 1974, the <sup>M3</sup>Water (Scotland) Act 1980 or any other enactment relating to building, the provision of public sewerage services, planning or the public supply of water.

#### Marginal Citations

**M2** 1968 c. 47.

**M3** 1980 c. 45.

## 89 Safety of platforms etc.

- (1) No person shall use or permit the use of a raised structure for the purpose of providing for himself or others raised seated or standing accommodation, unless such use has been approved by the local authority in whose area the raised structure is situated.
- (2) In this section a “raised structure” means a platform, stand, staging or other similar structure.
- (3) The local authority shall grant their approval of the use of a raised structure under subsection (1) above if they are satisfied that it—
  - (a) has been safely constructed and secured; and
  - (b) has sufficient means of entrance and exit including means of escape in case of fire or other emergencyin relation to the circumstances in which it is to be used; but not otherwise.
- (4) If the local authority are not the fire authority (being the authority discharging in the area of the local authority the functions of fire authority under the Fire Services Acts 1947 to 1959), they shall consult the fire authority before reaching their decision under subsection (3)(b) above.
- (5) The local authority may, when granting their approval of the use of a raised structure under this section or at any other time thereafter, impose by notice served on the person to whom approval is being or, as the case may be, has been granted such conditions as they think necessary relating to such use, and the conditions may include a condition as to the maximum number of persons permitted to use the raised structure and a prohibition on its use for so long as the conditions contained in the notice have not been complied with.
- (6) Any person who—
  - (a) uses or permits the use of a raised structure for the purpose of providing for himself or others raised seated or standing accommodation without the approval of the local authority under subsections (1) and (3) above; or
  - (b) contravenes a condition contained in a notice served on him under subsection (5) above

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F2</sup>level 4 on the standard scale].

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- (7) This section shall not apply to—
- (a) any structure in respect of which a building warrant has been granted;
  - (b) any structure in respect of which such a warrant, by reason only of the date when it was built, was not required; or
  - (c) scaffolding or similar equipment used in connection with work on a building or other structure.

In this subsection, “building warrant” means a warrant for the construction or the change of use of a building granted under section 6 of the <sup>M4</sup>Building (Scotland) Act 1959 (application of building standards regulations and building operations regulations to construction or demolition, and to change of use, of buildings).

- (8) Nothing in this section affects any requirement to obtain approval or any other obligation imposed by or by virtue of any other enactment.
- (9) The local authority shall charge such fees in respect of the discharge of their functions under this section as may be resolved by them from time to time and shall seek to ensure that the total amount of such fees is sufficient to meet the expenses incurred by them in that respect.
- (10) In this section, “local authority” means a district or islands council except that, in the case of a district situated within the Highland, Borders or Dumfries and Galloway region, it means the council of that region.

#### Textual Amendments

**F2** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289G**

#### Modifications etc. (not altering text)

**C1** S. 89 restricted by [Fire Safety and Safety of Places of Sport Act 1987 \(c. 27, SIF 45A\)](#), **ss. 26(1), 33(1)**  
(c)

#### Marginal Citations

**M4** 1959 c. 24.

## 90 Lighting of common stairs etc.

- (1) In this section—
- “common property” means common stairs or passages or private courts;
- “owner”, in relation to common property, means the owner or owners of lands or premises having a right of access by the common property;
- “private court” means any area which—
- (a) is maintained or liable to be maintained by a person other than a local authority; and
  - (b) forms a common access to lands or premises separately occupied.
- (2) A district or islands council may—
- (a) provide and maintain lighting in common property; and
  - (b) light and extinguish the lights in the common property or arrange for that to be done.

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- (3) A district or islands council may continue to provide and maintain lighting in any place where they provided and maintained it immediately before the commencement of subsection (2) above notwithstanding that the place is not common property.
- (4) Where, and to the extent that, the district or islands council for the area in which any common property is situated has not exercised the powers conferred upon them by subsection (2) above, it shall be the duty of the owner—
  - (a) to provide and maintain lighting in the common property to the satisfaction of the district or islands council; and
  - (b) to light and extinguish the lights in the common property at such times as the district or islands council may require by order published in accordance with subsection (6) below.
- (5) A district or islands council may by notice in writing require the owner to comply with subsection (4)(a) above within 14 days of the date of service of the notice on the owner.
- (6) An order made under subsection (4)(b) above shall be published once weekly for at least two weeks in a newspaper circulating in the area of the district or islands council.
- (7) In the event of the owner's failing to comply with subsection (4) above, the district or islands council may provide and maintain lighting or, as the case may be, light and extinguish the lights in the common property.
- (8) An authorised officer of the district or islands council shall be entitled at any reasonable time to enter common property for the purpose of determining whether subsection (4) above is being complied with and a person authorised to do so by such a council shall be entitled at any reasonable time to enter such property and to do there anything which the district or islands council are entitled to do under subsection (2), (3) or (7) above.
- [<sup>F3</sup>(9) A district or islands council who have, under subsection (2), (3) or (7) above, provided or maintained lighting or lit or extinguished lights shall be entitled to recover—
  - (a) from the owner of the lands or premises the expense incurred by the council; or
  - (b) where there is more than one owner of the lands or premises, that is, where the lands or premises are common property, from each owner such proportion of the expense thereby incurred by the council as the council may determine, but the council may remit any sum or part of any sum due to them under this subsection.]

#### Textual Amendments

- F3** S. 90(9) substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 6, [Sch. 1 Pt. III para. 39](#)

## 91 Installation of lights in private property.

- (1) A district or islands council or an owner of common property may, where it is necessary to do so for the purpose of performing their or, as the case may be, his functions under section 90 of this Act, provide and maintain lights in or on any land or building in or on which they have no right (apart from this section) to do so, and any person authorised by such council or by such owner may, at any reasonable time, enter that land or building in order to do so on their behalf.

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- (2) A district or islands council who provide and maintain or an owner of common property who provides and maintains lights under this section shall, in doing so, cause as little inconvenience and damage as possible and pay compensation for any damage done; and, in case of dispute, the amount of such compensation shall be determined summarily by the sheriff, whose decision in the matter shall be final.
- (3) The person having right to any land or building in or on which lights have been provided and maintained under subsection (1) above may, on giving 14 days written notice to that effect, require the district or islands council or, as the case may be, the owner of the common property to remove them temporarily during any reconstruction, repair or similar works relating to the land or building, and if the council or, as the case may be, the owner fails to do so, the person having right as aforesaid may do so and recover the expense thereof from the council or, as the case may be, the owner, with interest thereon at such reasonable rate as that person may determine from the date on which a demand for the expenses is served until payment.

## **92 Cleaning and painting of common stairs, etc.**

- (1) In this section—
  - “common property” means common stairs, passages, water-closets, backgreens or basements or other similar areas or private courts;
  - “occupier”, in relation to common property, means the occupier or occupiers of lands or premises having a right of access by, or a right in common to, the common property.
- (2) It shall be the duty of the occupier to keep the common property clean to the satisfaction of the district or islands council within whose area the common property is situated.
- (3) A district or islands council may make byelaws for the regulation of the cleaning of common property by the occupier in accordance with this section and such byelaws may provide that persons contravening such provisions of the byelaws as may be specified as provisions contravention of which is an offence shall be liable, on summary conviction, to a fine not exceeding [<sup>F4</sup>level 2 on the standard scale] or such lesser sum as the byelaws may specify.
- (4) A district or islands council may by notice in writing require the occupier to comply with subsection (2) above or with byelaws made under subsection (3) above within such reasonable time as may be specified in the notice.
- (5) Sections 99(4) and 106 of this Act shall not apply to a notice served under subsection (4) above.
- (6) A district or islands council may by notice in writing require the owner or owners of lands or premises having a right of access by common stairs or passages to paint or otherwise suitably decorate the common stairs or passages within such reasonable time as may be specified in the notice.
- (7) A district or islands council may remove litter from a backgreen or private court.
- (8) An authorised officer of a district or islands council shall be entitled at any reasonable time to enter common property for the purpose of—
  - (a) determining whether subsection (2) above and any byelaws made under subsection (3) above are being complied with;

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- (b) determining whether any common stairs or passages referred to in subsection (6) above require to be painted or otherwise suitably decorated.
- and a person authorised to do so by such a council shall be entitled at any reasonable time to enter such property and to do there anything which the council may do under subsection (7) above.
- (9) A person who throws down, drops or otherwise deposits, and leaves, litter in any common property shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F4</sup>level 3 on the standard scale].

#### Textual Amendments

**F4** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

### 93 Fire precautions in common stairs etc.

- (1) In this section—
- “common property” and “occupier” have respectively the same meanings as in section 92 of this Act;
- “combustible substance” means anything which is dangerously combustible in normal conditions and includes any container holding the combustible substance including any such container forming part of a motor vehicle but does not include anything forming part of any common property.
- (2) It shall be the duty of the occupier to keep the common property free of—
- (a) any combustible substances;
- (b) anything which might obstruct egress from and access to the property in the event of fire.
- (3) An authorised officer of the fire authority shall be entitled—
- (a) to enter common property for the purpose of determining whether subsection (2) above is being complied with; and
- (b) if it is not, and there is thereby an immediate risk of fire likely to endanger life, to enter the property and to do there anything he may consider necessary to remove that risk including seizing and arranging as he sees fit for the retention of any substance or other thing until claimed by a person having a right of possession to it.
- (4) The fire authority may by notice in writing require the occupier to comply with subsection (2) above within such reasonable time as may be specified in the notice by removing or rendering safe the substance or other thing (if any) there specified.
- (5) Any person who fails without reasonable excuse to comply with a notice served under subsection (4) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F5</sup>level 3 on the standard scale].
- (6) Section 105 of this Act shall apply to a notice served by a fire authority under subsection (4) above, as it applies to notices served by local authorities.
- (7) The fire authority shall be entitled to recover the expense of doing anything under subsection (3)(b) above from the occupier or person having a right of possession to such substances or articles as are referred to in the said subsection (3)(b) but may remit any sum or any part of any sum due to them under this subsection as they think fit.

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- (8) This section is without prejudice to any other enactment relating to fire precautions.
- (9) In this section, “fire authority” means the authority discharging in the area in which the common property is situated the functions of fire authority under the Fire Services Acts 1947 to 1959.

#### Textual Amendments

**F5** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

### 94 Disused petrol containers.

- (1) Where a fixed tank or other fixed container which has been used for the storage of petroleum spirit and is no longer used for that purpose (in this section referred to as a “disused petrol container”) is kept in any lands or premises, the occupier of the lands or premises (or, where the lands or premises are unoccupied, the owner) shall take all such steps as may be reasonably necessary to prevent danger from the container.
- (2) The regional or islands council for the area in which are situated the lands or premises in which there is a disused petrol container may by notice in writing require the occupier (or, as the case may be, the owner) of the lands or premises to comply with subsection (1) above within such reasonable time as may be specified in the notice.
- (3) An authorised officer of a regional or islands council shall be entitled, at any reasonable time, on producing his authorisation to any person for the time being in charge of any lands or premises in the area of the council in which there is a disused petrol container to enter the lands or premises for the purpose of determining whether subsection (1) above is being complied with.
- (4) This section shall not apply to lands or premises situated within the jurisdiction of a harbour authority (as defined in section 23 of the <sup>M5</sup>Petroleum (Consolidation) Act 1928).
- (5) In this section “petroleum spirit” has the same meaning as in the Petroleum (Consolidation) Act 1928.

#### Marginal Citations

**M5** 1928 c. 32.

### 95 Private open spaces.

- (1) It shall be the duty of the owner of every open space which is—
- (a) in a populous place; and
  - (b) set apart for use by the owners or occupiers of two or more separate properties, to maintain the open space and any boundary walls or fences so as to prevent danger or nuisance to the public.
- (2) A district or islands council may by notice in writing require the owner of an open space referred to in subsection (1) above to comply with that subsection within such reasonable time as may be specified in the notice.



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- (3) An owner of an open space referred to in subsection (1) above shall be entitled to recover from each person entitled to use the open space an equal proportion of—
- (a) the expense incurred by the owner in complying with that subsection; and
  - (b) any amount paid by the owner to the district or islands council under section 99(4) of this Act.

## 96 Statues and monuments.

- (1) A district or island council may—
- (a) erect, maintain, or permit the erection or maintenance of, any statue or monument in any public place;
  - (b) demolish or remove to another site any statue or monument maintained by them;
  - (c) by notice in writing require the owner of any statue or monument not maintained by them which is in a public place owned by them, within such reasonable time as may be specified in the notice, to put it in good order and repair, or demolish it or remove it to another site:

Provided that the powers conferred by paragraphs (a) and (b) above shall not be exercised without the prior consent of—

- (i) the owner of the land on which the statue or monument is, or is proposed to be, situated; and
- (ii) [<sup>F6</sup>where such land is a road, the roads authority.]

and the powers conferred by paragraphs (b) and (c) above shall be exercised only where the council consider it expedient to exercise them for reasons of public safety or the better use of the site on which the statue or monument has been erected.

- (2) Sections 99 to 109 of this Act shall apply in relation to a statue or monument in respect of which a notice is served under paragraph (c) of subsection (1) above with the following modifications—
- (a) any reference in these sections to the land or premises shall be construed as a reference to the statue or monument; and
  - (b) any reference to a tenant or other occupier of land or premises shall be construed as a reference to the tenant or other occupier of the land or premises in or on which the statue or monument is situated.
- (3) This section is without prejudice to section 53 of the <sup>M6</sup>Town and Country Planning (Scotland) Act 1972 (control of works for demolition, alteration or extension of listed building) or section 2 of the <sup>M7</sup>Ancient Monuments and Archaeological Areas Act 1979 (control of works affecting scheduled monuments).

### Textual Amendments

**F6** S. 96(1)(ii) substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), Sch. 9 para. 87(5)

### Marginal Citations

**M6** 1972 c. 52.

**M7** 1979 c. 46.

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## 97 Street names and house numbers.

A district or islands council may, in relation to any . . . <sup>F7</sup> road . . . <sup>F7</sup> in their area—

- (a) give such name to it as they think fit;
- (b) after advertising in a newspaper circulating in their area any proposal to alter its name and taking into account any representations thereupon made to them within 28 days after the date of the first publication of the advertisement, alter any such name;
- (c) affix, paint or mark its name on any premises, fence, lamp post, pole or other structure in it so as to be readily legible to members of the public there, and erect poles or other structures there for that purpose;
- (d) give each of the premises in it such distinguishing number as they think fit; alter that number when necessary; and require the owner of each of the premises, by notice served on him, to affix or paint that number on his premises so that it is readily legible from the nearest part of the public place giving access to the premises.

### Textual Amendments

**F7** Words repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), [Sch. 11](#)

## 98 Luminous tube signs.

(1) The Secretary of State may make regulations for ensuring the safe operation of electrical luminous tube signs, and without prejudice to that generality such regulations may include provisions—

- (a) requiring the provision of switches to cut off the supply of electricity to such signs to the satisfaction of the fire authority;
- (b) requiring the giving of notice to the fire authority by any person proposing to install such a sign;
- (c) empowering the fire authority to serve a counter-notice prohibiting the use of such a sign if they are not satisfied that it is safe in the event of its being affected by fire or steps taken to put fire out;
- (d) giving a right of appeal against a counter-notice to the sheriff by the person upon whom it has been served;
- (e) making it an offence to fail without reasonable excuse to comply with any obligation imposed by the regulations which is specified in the regulations as an obligation breach of which is an offence and providing that any person guilty of such an offence shall be liable, on summary conviction, to a fine not exceeding [<sup>F8</sup>level 3 on the standard scale] or such lesser sum as may be specified in the regulations.

(2) In subsection (1) above—

“electrical luminous tube sign” means—

- (a) any luminous tube sign designed to work on a voltage [<sup>F9</sup>of such description as may be specified in regulations made under subsection (1) above], or ancillary equipment so designed; and
- (b) any transformer required to raise the voltage of the sign or equipment; and

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“fire authority”, in relation to an electrical luminous tube sign, means the authority discharging in the area in which the sign is situated the functions of fire authority under the Fire Services Acts 1947 to 1959.

- (3) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F8** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G  
**F9** Words substituted by [Fire Safety and Safety of Places of Sport Act 1987 \(c. 27, SIF 81:2\)](#), s. 48

*Powers of entry, execution of works, etc.*

### 99 Power to enter, execute works and recover expense.

- (1) Where, under any notice served by a local authority under this Part of this Act, anything is required to be done by the owner or occupier of land or premises in relation to the land or premises an authorised officer of the local authority may, on the expiration of any period of time specified in the notice as that in which the thing has to be done, enter the land or premises to see if whatever is required to be done under the notice has been done.
- (2) Where—
- (a) under any notice served by a local authority under this Part of this Act, anything is required to be done by the owner or occupier of land or premises in relation to the land or premises and the owner, or as the case may be, the occupier fails to do it in accordance with the notice; and
- (b) there is no express provision in this Act, apart from this section, authorising the local authority to do whatever is required by the notice to be done,
- any person authorised by the local authority may enter the land or premises and do or cause to be done whatever is required by the notice to be done.
- (3) A person shall not be entitled to exercise the powers which he may exercise under subsections (1) or (2) above until he has produced his authorisation to do so to the person for the time being in charge of the land or premises.
- (4) Subject to subsection (7) below, a local authority shall be entitled to recover the expense of doing anything in relation to any land or premises under subsection (2) above from the owner or, as the case may be, the occupier of the land or premises but may remit any sum or any part of any sum due to them under this subsection as they think fit.
- (5) Where such expense as is mentioned in subsection (4) above is recoverable under that subsection from more than one person, the local authority may apportion such expense among them.
- (6) Where a local authority claim to recover any expense as is mentioned in subsection (4) above from a person and he proves that he—
- (a) is receiving the rent of the land or premises merely as trustee, tutor, curator, factor or agent for some other person; and

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- (b) has not, and since the date of service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,

his liability shall be limited to the total amount of money which he has or has had in his hands as aforesaid.

- (7) Subsection (4) above does not apply in relation to any cleaning of common property done under subsection (2) above.

- (8) In this section and in sections 100 to 109 of this Act references to the occupier of land or premises include references to the occupier of common property within the meaning given to those expressions by section 92 of this Act.

## **100 Interest on expenses.**

Where under any provision of this Part of this Act a local authority is entitled to recover expenses, they shall also be entitled to interest thereon at such reasonable rate as they may determine from the date on which a demand for the expenses is served until payment but they may remit any sum or any part of any sum due to them as interest as they think fit.

## **101 Offences relating to powers of entry and carrying out of works.**

Any person who—

- (a) fails without reasonable excuse to permit—
- (i) an authorised officer of a local authority who, in pursuance of sections 90(8), 91(1), 92(8) or 99(1) of this Act, demands to do so, to enter any land or premises; or
  - (ii) a person authorised by a local authority under section 87(3), 90(8), 91(1), 92(8) or 99(2) of this Act to enter any land or premises and do or cause anything to be done there who demands to do so or an owner of land, building or other premises or his contractors or workmen who having been authorised under section 88 or 104 or being entitled under section 91(1) of this Act to enter the land, building or other premises and execute work there demands or demand to do so, to enter the land, building or other premises and do there whatever is to be done; or
- (b) obstructs the entry in pursuance of this Act to any land or premises of, or the doing there in accordance with this Act of anything by, any such authorised officer or other person who has demanded so to enter or so to do that thing,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [<sup>F10</sup>level 3 on the standard scale].

### **Textual Amendments**

**F10** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

## **102 Entry warrants.**

- (1) If a justice of the peace or sheriff is satisfied by evidence on oath that—
- (a) entry to any land or premises which a person is entitled to enter in pursuance of this Part of this Act has been refused to that person or he has been prevented

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from doing there anything which he is entitled to do in pursuance of this Part of this Act or such refusal or prevention is apprehended or that the land or premises are unoccupied or that the occupier is temporarily absent or that the case is one of emergency; and

- (b) there is reasonable ground for entry to the land or premises for the purposes for which entry is required

he may grant a warrant to the person to enter the land or premises specified in the warrant if need be by force and to do whatever is to be done.

- (2) A warrant issued in pursuance of this section shall continue in force for a period of one month beginning with the day on which it was granted or until the purpose for which entry is required has been satisfied, whichever is the shorter.
- (3) A person who has been granted a warrant under this section to enter any unoccupied land or premises or land or premises the occupier of which is temporarily absent shall leave the land or premises as effectively secured against trespassers as he found it or them.

#### **103 Execution of owner's works by occupier.**

- (1) If, in relation to any land or premises, the owner of the land or premises fails to do anything which he is required to do by notice served under this Part of this Act, the tenant or other occupier of the land or premises may, with the consent of the local authority which served the notice, do whatever the notice requires to be done, and may, subject to subsection (2) below, deduct the expense of doing so (with interest thereon from the date on which the expense was incurred at such reasonable rate as the local authority may determine) from any rent due or to be due by the tenant or occupier to the owner in respect of the land or premises.
- (2) Nothing in subsection (1) above authorises the deduction of any expenses from any rent where the deduction would be at variance with any right or obligation arising apart from that subsection between the owner of the land or premises and the tenant or occupier thereof.

#### **104 Powers of entry: occupier and owner.**

If the tenant or other occupier of any land or premises prevents the owner of them from executing any work which he is required to execute in pursuance of any notice served by a local authority under this Part of this Act, the sheriff may, on the application of the owner, authorise the owner and his contractors and workmen to enter the land or premises for the purpose of executing such work.

#### **105 Contents of notices.**

Except where otherwise expressly provided under this Part of this Act, any notice issued or served by a local authority under this said Part regarding the doing of any thing in relation to land or premises shall, so far as necessary and reasonably practicable, specify—

- (a) details, including the location, of the land or premises;
- (b) the nature of any works which have to be carried out and of any requirements which have to be met; and
- (c) the period within which the notice has to be complied with.

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## **106 Appeals.**

- (1) A person may, in accordance with subsection (3) below, appeal to the sheriff—
  - (a) against any requirement in any notice served on him under this Part of this Act by a local authority; or
  - (b) in respect of the amount of any expenses or interest claimed from him or the rate at which interest is charged against him under this Part of this Act.
- (2) The owner of any land or premises may, in accordance with subsection (3) below, appeal to the sheriff in respect of any expenses or interest (including the rate at which interest is charged) claimed or deducted under section 103 of this Act.
- (3) An appeal under subsection (1) or (2) above shall be made by way of summary application and shall be lodged within 14 days of—
  - (a) in the case of an appeal under paragraph (a) of subsection (1) above, the date of service of the notice; and
  - (b) in other cases, the date of service of the claim for payment or, in the case of an appeal under subsection (2) above where the expense or interest has been deducted from rent, the date of that deduction.
- (4) The sheriff may, on an appeal under this section—
  - (a) order that the requirement appealed against shall be of no effect or that it shall have effect subject to such modifications as he may specify in his order or confirm it;
  - (b) make such order as to the expenses which are or interest which is the subject of the appeal as appears to him appropriate.
- (5) Any party to an appeal under subsection (1) or (2) above may appeal on a point of law from the sheriff's decision to the Court of Session within 14 days from the date of that decision.
- (6) No appeal shall lie from the opinion of the Court of Session given in pursuance of subsection (5) above.

## **107 Time for enforcing certain notices.**

A notice containing a requirement which may be appealed against under paragraph (a) of section 106(1) of this Act shall not be acted upon by a local authority or any person authorised by a local authority to do anything until the time for appealing under that paragraph has expired or, if an appeal thereunder has been lodged, until it is disposed of or abandoned.

## **108 Recovery of expenses incurred under section 87 by charging order.**

- (1) Where, under—
  - (a) section 87(3) of this Act; or
  - (b) section 99(4) thereof (to the extent that it relates to failure to rectify a defect specified in a notice served under section 87(1) thereof)

a local authority are entitled to recover any expenses, they may make in favour of themselves an order providing and declaring that the land, building or premises is thereby charged and burdened with an annuity to pay the amount of the expenses.

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(2) Paragraphs 2 to 8 of Schedule <sup>F11</sup>9 to the Housing (Scotland) Act 1987] shall apply to an order under subsection (1) above as they apply to a charging order under paragraph 1 of that Schedule but with the following modifications, that is to say, in sub-paragraph (b)(i) of paragraph 4 of that Schedule at the end there shall be inserted the words “or any sum secured by virtue of section 5(5) to (8) of the <sup>M8</sup>Land Tenure Reform (Scotland) Act 1974” and in sub-paragraph (b)(ii) of that paragraph, after the word “Act”, where thirdly occurring, there shall be inserted the words “or under the <sup>M9</sup>Building (Scotland) Act 1959.”.

#### Textual Amendments

**F11** Words substituted by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), ss. 335, 339(2), **Sch. 23 para. 28(2)**

#### Marginal Citations

**M8** 1974 c. 38.

**M9** 1959 c. 24.

### 109 Replacement of provisions of this Part by Health and Safety Regulations.

Subsection (1) of section 80 of the <sup>M10</sup>Health and Safety at Work etc. Act 1974 (repeal or modification of certain provisions by regulations) shall apply to any provision of this Part of this Act and to any byelaws made under any such provision as it applies to any provision mentioned in subsection (2) of that section.

#### Marginal Citations

**M10** 1974 c. 37.

**Status:**

Point in time view as at 01/10/1992.

**Changes to legislation:**

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