

POLICY NOTE

THE BUILDING (SCOTLAND) ACT 2003 (CHARGING ORDERS) REGULATIONS 2014

SSI 2014/369

1. The above instrument was made in exercise of the powers conferred by sections 36, 33(1)b(ii) and 36(1) of the Building (Scotland) Act 2003. The instrument is subject to negative procedure.

Policy Objectives

2. The Building (Recovery of Expenses) (Scotland) Act 2014 (2014 Act) improves the existing cost recovery powers for local authorities taking enforcement action under sections 25-30 of the Building (Scotland) Act 2003 (2003 Act).
3. When a local authority takes enforcement action under these sections, for example on a defective or a dangerous building, they can recover their costs from the owner of the building and relies on normal cost recovery powers to get payment.
4. The 2014 Act introduces new sections 46A-46H into the 2003 Act which provide for a local authority to make a charging order in respect of the expenses incurred taking enforcement action.
5. Under the new provisions introduced by the 2014 Act, when a local authority makes a charging order they must register it on the appropriate land register. When the debt has been settled to the satisfaction of the local authority, they must register a discharge of the charging order in the appropriate land register. The 2014 Act introduces a right of appeal in relation to a charging order into section 47, alongside the other existing rights of appeal in the 2003 Act.
6. The Building (Scotland) Act 2003 (Charging Orders) Regulations 2014 make provision for the notification and form of a charging order and the form of a discharge.
7. Firstly, when a local authority makes a charging order the owner has a right of appeal under section 47(3) of the 2003 Act. The local authority must register the charging order in the appropriate land register but at the same time the owner must be made aware of the existence of the charging order. Therefore regulation 2 includes provisions for notification of making of a charging order. This includes serving a copy of the order on the owner, advising the owner of the effect of the order, and notifying them of the right of appeal and the time limit for doing so.
8. Secondly, regulation provides for standard forms for the Charging Order and Discharge of Charging Order for a local authority to use. These are set out in schedule 1 and schedule 2 to ensure the documentation to be registered on the appropriate land register is consistent across all 32 local authorities.

Consultation

9. Registers for Scotland were consulted in April 2014 during the bill stage of the 2014 Act and they recommended that standard forms are provided for the charging order and discharge of charging order to ensure a consistent approach.
10. Local authorities were similarly consulted during the passage of the Bill through parliament and were supportive of the new provisions in the Act. They are aware of the benefits of standard forms and suitable notifications which already exist in other aspects of the 2003 Act.

Impact Assessments

11. There are no equality impact issues.

Financial Effects

12. The Minister for Local Government and Community Empowerment confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

**Scottish Government
Local Government and Communities Directorate**

16 December 2014