

Local Authority Chief Executives
(Copy to Local Authority Building Standards Managers)



Our ref: A10186859
3 February 2015

Dear Chief Executive

CHANGES TO LEGISLATION FOR JANUARY 2015
Building (Scotland) Act 2003 – Amendments introduced by the Buildings (Recovery of Expenses) (Scotland) Act 2014

I am writing to advise you that the Buildings (Recovery of Expenses) (Scotland) Act 2014 has introduced changes to the Building (Scotland) Act 2003 which came into force on 24 January 2015. The relevant legislation is:

- The Buildings (Recovery of Expenses) (Scotland) Act 2014
- The Building (Scotland) Act 2003 (Charging Orders) Regulations 2014

The provisions in new sections 46A to 46H of the Building (Scotland) 2003 Act supplement the existing cost recovery powers in the Act. The new powers allow a local authority to make a charging order in respect of their reasonable expenses incurred for work in relation to compliance or enforcement, and defective and dangerous buildings under sections 25 to 30.

The regulations provide standard forms for the charging order and the discharge of the charging order, and details of notifying a building owner when a charging order is made. The Building Standards Procedural Handbook has been updated to include the new charging order provisions and details of these, and the new legislation, are set out in **Annex A**.

Yours faithfully



BILL DODDS
Head of Building Standards

ANNEX A

1. **The Buildings (Recovery of Expenses) (Scotland) Act 2014 (2014 asp 13)**
<http://www.legislation.gov.uk/asp/2014/13/contents>
2. **The Building (Scotland) Act 2003 (Charging Orders) Regulations 2014 (SSI 2014/369)**
<http://www.legislation.gov.uk/ssi/2014/369/contents/made>
3. **Building Standard Procedural Handbook**
<http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/ProceduralLegislation/ProceduralHandbook>

Paragraph	Aspect	Changes to Procedural Handbook
Version	1.3	Version 1.4 details added (for charging orders)
Contents	10.8	Reference to new section added “10.8 Charging Orders”
7.1.4	s.25	New sentence added after “... recover the costs from the owner.” – “A local authority entitled to recover it’s costs may make a charging order in favour of itself and register it in the appropriate land register (see 10.8).”
Fig. 7	Flow chart	New sentence added to box “Local authority may carry out necessary work and recover costs from the owner. ” – “LA may make a charging order.” New note added to table – “5. A local authority entitled to recover it’s costs may make a charging order in favour of itself and register it in the appropriate land register (see 10.8).”

7.2.7	s.27	New sentence added after "... recover the costs from the person." – "A local authority entitled to recover it's costs may make a charging order in favour of itself and register it in the appropriate land register (see 10.8)."
7.5.2	s.26	New sentence added after "... recover costs from the owner." – "A local authority entitled to recover it's costs may make a charging order in favour of itself and register it in the appropriate land register (see 10.8)."
Fig. 9	Flow chart	New sentence added to box "Local authority may carry out the work and recover costs from the owner." – "LA may make a charging order." New note added to table – "3. A local authority entitled to recover it's costs may make a charging order in favour of itself and register it in the appropriate land register (see 10.8)."
10.2.2	Urgent action	New sentence added after "... recovered from the building owner(s)." – "A local authority entitled to recover it's costs may make a charging order in favour of itself and register it in the appropriate land register (see 10.8)."
10.2.3	Urgent action	New sentence added after "... recover the costs from the owner." – "Again a local authority entitled to recover it's costs may make a charging order in favour of itself and register it in the appropriate land register (see 10.8)."
10.3.4	Urgent action	New sentence added after "... recovered from the building owner(s)." – "A local authority entitled to recover it's costs may make a charging order in favour of itself and register it in the appropriate land register (see 10.8)."

10.3.5	Urgent action	New sentence added after "... recovered from the building owner(s)" – "Again a local authority entitled to recover it's costs may make a charging order in favour of itself and register it in the appropriate land register (see 10.8)."
Fig. 12	Flow chart	New sentence added to box "Local authority must register a completion certificate then recover expenses" – "LA may make a charging order." New note added to table – "6. A local authority entitled to recover it's costs may make a charging order in favour of itself and register it in the appropriate land register (see 10.8)."
10.5.1	s.29	New sentence added after "... recover from the owner any expenses reasonably incurred." – "A local authority entitled to recover it's costs may make a charging order in favour of itself and register it in the appropriate land register (see 10.8)."
10.7.1	s.29	Bracketed text in last sentence and new text added – "The normal methods of debt recovery apply, except as explained in paragraphs 10.7.3 and 4 below." "Also from 24 January 2015, when a local authority has carried out such work, a local authority may make a charging order and register it in the appropriate land register to help them recover their expenses (see 10.8 Charging Orders below)."

10.8	s.29	<p>New section 10.8 Charging Orders added –</p> <p>“10.8 Charging Orders</p> <p>10.8.1 When a local authority undertakes work in relation to compliance or enforcement, or in relation to a defective or dangerous building, it may recover any expenses reasonably incurred and normal methods of debt recovery apply. The 2003 Act was amended on 24 January 2015 by the Building (Recovery of Expenses) (Scotland) Act 2014 to improve these cost recovery powers and further help local authorities recover their expenses.</p> <p>10.8.2 The charging order provisions in sections 46A to 46H of the 2003 Act cover work and expenses recoverable by a local authority in relation to a notice served under sections 25-30, or urgent action undertaken on a dangerous building under section 29(3), from 24 January 2015. The notices are a Building regulations compliance notice, a Continuing requirement enforcement notice, a Building warrant enforcement notice, a Defective buildings notice and a Dangerous buildings notice.</p> <p>The charging order provisions supplement normal methods of debt recovery and allow the local authority to make a charging order and register it in the appropriate land register. This means either registering in the Land Register of Scotland or recording in the Register of Sasines.</p> <p>A local authority entitled to their recoverable expenses under sections 25-30 (qualifying expenses) are also entitled to the registration and administration fees associated with the charging order and it's discharge, and interest at a reasonable rate.</p> <p>When a local authority makes a charging order it must register it in the appropriate land register. They must serve a copy of the charging order on the owner(s) of the building concerned and advise them of the effect of the charging order and the right of appeal. The charging order will specify the building concerned and the repayable amount. The local authority can determine the most appropriate number of annual instalments between 5 and 30 and the date for payment of each instalment which will be set out in the charging order.</p> <p>Although the charging order sets out annual instalments, the owner can repay the full amount at any time. The local authority may also agree a lower settlement sum with the owner if they</p>
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		<p>choose. When the outstanding amount has been paid, the local authority must register the discharge of the charging order in the appropriate land register.</p> <p>An owner can appeal a charging order in the same way as the other decisions and notices in the 2003 Act, that is within 21 days of being made. The local authority can register the charging order immediately they have made it even though it does not come into effect until the 21 day appeal period has passed, or if an appeal is made, the appeal has been determined.</p> <p>The charging order provisions are also designed to help prevent owners from transferring ownership of their building to avoid their liabilities, and help prevent owners using the appeal mechanism as a stalling tactic. If a new owner acquires right to the building 14 or more days after registration, both the new and former owners will become severally liable.</p> <p>Standards forms for a charging order and a discharge of a charging order are set out in the Building (Scotland) Act 2003 (Charging Orders) Regulations 2014, together with details of notification of the making of a charging order.”</p>
11.1.4	s.28	<p>New sentence added after “... expenses reasonably incurred in doing so.” –</p> <p>“A local authority entitled to recover it’s costs may make a charging order in favour of itself and register it in the appropriate land register (see 10.8).”</p>
Fig. 13	Flow chart	<p>New box added between “Local authority may carry out work then recover expenses” and “Local authority must register a completion certificate in BSR”–</p> <p>“LA may make a charging order and register it in the appropriate land register.”</p>