Buildings (Recovery of Expenses) (Scotland) Act 2014

2014 asp 13

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The Bill for this Act of the Scottish Parliament was passed by the Parliament on 19th June 2014 and received Royal Assent on 24th July 2014

An Act of the Scottish Parliament to amend the Building (Scotland) Act 2003 to provide for expenses incurred by local authorities in connection with notices served or work carried out under that Act to be recovered by way of charging order.

1 Expenses recoverable using charging orders S

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 25(7)(b), 26(3)(b), 27(7)(b), 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) A charging order, and a discharge of a charging order, are to be in the form prescribed under section 36.

Changes to legislation: *There are currently no known outstanding effects for the Buildings (Recovery of Expenses) (Scotland) Act 2014. (See end of Document for details)*

46B Qualifying expenses

(1) Qualifying expenses are expenses recoverable by a local authority under section 25(7)(b), 26(3)(b), 27(7)(b), 28(10)(b), 29(2) or (3) or 30(4)(b) and which relate to—

(a) a building regulations compliance notice under section 25(3) served after the commencement of this section,

(b) a continuing requirement enforcement notice under section 26(2) served after such commencement,

(c) a building warrant enforcement notice under section 27(2) relating to a building served on the owner of the building after such commencement,

(d) 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 such commencement, or

(e) notice under section 29(3) or, as the case may be, works under that section without notice, in either case given or carried out after such 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, section 46A and sections 46C to 46G 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.

(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,

(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.

(3) The local authority must determine—

(a) the number of annual instalments, being no fewer than 5 and no more than 30, in which the repayable amount is to be paid, and

(b) the date in each year on which the instalment becomes due.

46D Charging order provision and early repayment

(1) A charging order must provide—

(a) that the repayable amount is payable in the number of annual instalments and on the date in each year determined under section 46C(3),

(b) that in default of such payment each instalment, together with any amount recoverable in respect of that instalment under section 46C(2)(a) or (b), is to be separately recoverable as a debt, and

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

(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 as the owner may agree with the local authority.

46E Registration

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

(2) A charging order may be registered in any period during which the order is of no effect by virtue of section 47(4).

(3) On the registration of a charging order, the charge specified in the order is created in respect of the building specified in it.

(4) A registered charging order is enforceable at the instance of the local authority against the owner of the charged building (but subject to section 46F).

(5) The local authority must register a discharge of a charging order in the appropriate land register as soon as reasonably practicable after it has received—

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

(b) a sum redeeming the repayable amount under section 46D(2).

(6) On the registration of the discharge of a charging order, the charge specified in the order is discharged.

46F Liability of new owner

(1) Subsection (2) applies where—

(a) a charging order is registered in respect of a building, and

(b) the order was registered at least 14 days before the date on which a person (the "new owner") acquires right to the building.

(2) The new owner is severally liable with any former owner of the building for the repayable amount for which the former owner is liable.

46G Continuing liability of former owner

(1) An owner of a building who is liable for the repayable amount does not, by virtue only of ceasing to be such an owner, cease to be liable for the repayable amount.

(2) Where, in relation to a building, a new owner (within the meaning of section 46F(1)(b)) pays the repayable amount, or any part of it, for which a former owner of the building is liable, the new owner may recover the amount, or the part of it, so paid from the former owner.

(3) A person who is entitled to recover an amount under subsection (2) does not, by virtue only of ceasing to be the owner of the building, cease to be entitled to recover that amount.

46H "Register" and "appropriate land register"

(1) In sections 46C to 46F, "register", in relation to a charging order or a discharge of a charging order, means register the information contained in the order or discharge in the Land Register of Scotland or, as appropriate, record the order or discharge in question in the Register of Sasines; and "registered" and other related expressions are to be read accordingly.

(2) In section 46E, "appropriate land register" means the Land Register of Scotland or the Register of Sasines.",

(c) in section 47—

(i) in subsection (1), after paragraph (g) insert—

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

(ii) in subsection (3), for the words "or notice" in both places where they occur, substitute " , notice or order ",

(iii) after subsection (3) insert—

"(3A) On any appeal made by virtue of subsection (3) in relation to a charging order made under section 46A, 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), for the words "or notice" substitute " , notice or order ".

2 Ancillary provision S

(1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional or transitory provision or savings as they consider appropriate for the purposes of, in consequence of, or for giving full effect to any provision of this Act.

(2) An order under this section may modify this or any other enactment.

(3) An order under this section containing provision which adds to, replaces or omits any part of the text of an Act is subject to the affirmative procedure.

(4) Otherwise, an order under this section is subject to the negative procedure.

3 Commencement S

(1) This section and section 4 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.

4 Short title S

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

Changes to legislation:
There are currently no known outstanding effects for the Buildings (Recovery of Expenses) (Scotland) Act 2014.