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## **Buildings (Recovery of Expenses) (Scotland) Bill**

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Bill Number:	SP Bill 39
Introduced on:	30 October 2013
Introduced by:	David Stewart MSP
Passed:	19 June 2014
Royal Assent:	24 July 2014

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### **Passage of the Bill**

The [Defective and Dangerous Buildings \(Recovery of Expenses\) \(Scotland\) Bill](#) [SP Bill 39] was introduced in the Parliament on 30 October 2013 by David Stewart MSP. The Local Government and Regeneration Committee was appointed as lead committee for Stage 1. Its [Stage 1 report](#) was published on 18 March 2014. The [Stage 1 debate](#) took place on 3 April 2014 and Parliament agreed the general principles of the Bill unanimously.

26 amendments to the Bill were proposed at Stage 2. 22 amendments were lodged by Derek Mackay MSP, the Minister for Local Government and Planning and four by David Stewart MSP. All amendments were agreed without division. The title of the Bill was amended at Stage 2, with the words “Defective and Dangerous” removed from the title.

13 amendments were lodged at Stage 3. All amendments were agreed to without division. The Bill was passed unanimously at Stage 3, without amendment, on 19 June 2014.

### **Purpose and objectives of the Bill**

The Bill amends the Building (Scotland) Act 2003 (“the 2003 Act”) to allow local authorities to make charging orders for the recovery of expenses incurred where they have carried out work to defective or dangerous buildings under sections 28, 29 or 30 of the 2003 Act.

A charging order is a method of debt recovery available to local authorities under certain statutes. A charging order declares that a building is burdened with an annuity (i.e. an annual payment due to the local authority) to repay the expenses incurred by the authority.

## **Provisions of the Bill**

The Bill amends the 2003 Act to allow a local authority to make a charging order in respect of certain expenses incurred in undertaking work to a dangerous or defective building. It provides definitions of the key terms “qualifying expenses” and “repayable amount”, sets out the core terms of a charging order and how these are to be repaid and discharged. It also defines how a local authority should register, and discharge, a charging order and specifies the liabilities of new owners and continuing liabilities of former owners.

## **Parliamentary consideration**

Three key concerns were raised during Stage 1 consideration of the Bill. The first concerned the relative inflexibility of the specified 30 year timescale for cost recovery by charging order. Local authorities and representatives from the building and property industries thought that cost recovery should be made over a period based on the level of cost incurred and the property owners’ ability to pay. Amendments at Stage 2 allowed for the duration of the charging order to be varied from the usual 30 year term.

Secondly, concerns were raised about the limited scope for using charging orders to recover expenditure made under the 2003 Act. Amendments were made at Stage 2 to extend the circumstances under which a charging order could be used to recover local authority expenditure to include where building regulations compliance notices; continuing requirement enforcement notices and building warrant enforcement notices have been issued.

Finally, concerns were raised about the liability of owners, particularly where a property is sold before a charging order could be registered. Amendments were subsequently made at Stage 2 to ensure that current and new owners were jointly liable with the seller for unpaid amounts at the time of sale. Amendments were also made at stage 3 to ensure that charging orders would only apply where the person liable for the expense that is the subject of a charging order is the owner of the building.