

DEFECTIVE AND DANGEROUS BUILDINGS (RECOVERY OF EXPENSES) (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill introduced in the Scottish Parliament on 30 October 2013:

- Explanatory Notes;
- a Financial Memorandum;
- David Stewart's Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 39–PM.

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Non-Government Bills Unit in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Bill amends the Building (Scotland) Act 2003 (“the 2003 Act”) to provide the framework for local authorities to make charging orders for recovery of expenses incurred where local authorities have carried out work to defective or dangerous buildings under the 2003 Act.
4. The principal reference points for the amendments to the 2003 Act are sections 28, 29 and 30 of that Act, which deal with matters concerning defective and dangerous buildings. It may therefore be useful, by way of context, to provide some detail on those sections.
5. The term “building” has the meaning given in section 55 of the 2003 Act. Essentially, it comprises any structure or erection, whether temporary or permanent. Further, where reference is made to a building, this includes reference to a part of the building. Section 28 of the 2003 Act enables a local authority to serve on the owner of a building a notice (a “defective building notice”) requiring the owner to rectify such defects in the building as the notice may specify. Where the owner has not carried out the work, then under section 28(10)(b) of the 2003 Act the local authority can do so, and can recover from the owner any expenses reasonably incurred by it in doing so.
6. Where it appears to a local authority under section 29(1) of the 2003 Act that a building (a “dangerous building”) constitutes a danger to persons in or about it or to the public generally or to adjacent buildings or places then the local authority must carry out such work (including, if necessary, demolition) as it considers necessary to prevent access to it and to protect the public (section 29(2)). It can also recover expenses incurred in that regard. Subsection (3) recognises that it may not be possible to give prior notice to the owner, and that the local authority may require to take urgent action. It may also, in that situation, recover expenses incurred from the owner.
7. Section 30 of the 2003 Act sets out what is to be contained within a dangerous building notice. Where an owner has not carried out work by the dates specified for compliance under the notice, subsection (4) enables the local authority to carry out the required work and to recover expenses incurred by it from the owner.

COMMENTARY ON SECTIONS

The structure of the Bill

8. The Bill has three sections. Section 1, which represents the main part, comprises insertions to the 2003 Act, to make provision for charging orders under that Act. Section 2 deals with commencement and section 3 sets out the Bill's short title.

THE BILL – SECTION BY SECTION

Section 1(a) – limitation on recoverable expenses

9. Section 1(a) amends section 44 of the 2003 Act. While, generally, the 2003 Act provides for a local authority to recover expenses for work carried out to defective or dangerous buildings, section 44(2) restricts liability for expenses in certain circumstances. For example, where the person is not the owner but simply a trustee and where the funds held by the trustee are insufficient to meet the whole demand. Where this twofold test set out in section 44(2) is met, liability is limited to the total amount held by the person concerned.

10. Section 1(a) extends this restriction on the general entitlement to recover expenses to charging orders where the interest of the person involved is limited to that of trustee, or someone acting in any of the other capacities set out at section 44(2)(a). These matters are dealt with at section 1(a)(i) and (ii) of the Bill, by means of adjustments to section 44(1) and 44(2)(b) of the 2003 Act, respectively.

Section 1(b) - charging orders

11. Section 1(b) contains the main provisions of the Bill dealing with charging orders. It takes the form of insertion of several sections at Part 5 (General) of the 2003 Act, immediately after section 46. These sections cover the following matters: 46A (Charging Orders); 46B (Qualifying expenses); 46C (Repayable amount); 46D (Core terms of charging orders, repayment and discharge); and 46E (Registration).

46A – Charging Orders

12. Under section 46A(1), a local authority entitled to recover any expenses under the relevant provisions contained within sections 28, 29 and 30 which represent “qualifying expenses” (as detailed in section 46B) can make a charging order. Section 46A(1) then sets out some of the basic elements of a charging order, namely that it is to specify the building concerned, the repayable amount (as detailed in section 46C), and is to provide that the building is charged with the repayable amount.

13. Section 46A(2) introduces Schedule 5A to the 2003 Act. That deals with the contents of charging orders and discharges of charging orders, which are to be in such form as the local authority determines so as to give effect to Schedule 5A. That requirement is subject however to section 46A(3), which is an order-making power under which the Scottish Ministers can set out the form which charging orders and discharges must take.

46B – Qualifying expenses

14. Section 46B(1) provides that “qualifying expenses” represent the expenses which are recoverable by local authorities for works carried out under sections 28, 29 and 30 of the 2003 Act, and relating to notices or works without notice detailed in the specific subsections concerned. Section 46B(1) further provides that it applies only to notices served or works carried out following commencement of the relevant sections of the Bill, which are brought into force six months after Royal Assent.

15. Section 46B(2) provides that where the Bill refers to a building, then in the event of a charging order being made for expenses incurred in demolishing a building, references in section 46A to 46E, and in Schedule 5A, are to be read as references to the site of the demolished building.

46C – Repayable amount

16. Section 46C(1) provides that the repayable amount under a charging order is the lower of the two amounts set out at paragraphs (a) and (b) of section 46C(1). That is, (a), the total of the qualifying expenses (as provided for at section 46B(1), and relating to the expenses incurred by the local authority in carrying out repairs or demolition work), together with any additional amounts recoverable under section 46C(2), and (b), such amount as the local authority determines.

17. In addition to the qualifying expenses, local authorities may also recover other costs from the owner, as set out at section 46C(2). These cover registration fees on charges and discharges, administration or other expenses incurred in that connection, and interest. The rate of interest can be varied, but must be reasonable.

46D – Core terms of charging orders, repayment and discharge

18. Section 46D(1) sets out certain matters that a charging order must provide for. It contains details of how the repayable amount under a charging order is to be paid, what happens where an instalment payment is missed, and makes provision for dealing with any outstanding balance due at the end of the 30 year instalment period.

19. Section 46D(1)(a) provides for the repayable amount under a charging order to be paid by means of 30 annual instalments, these being due on the same date each year. Section 46D(1)(b) confirms that where an annual instalment is not paid, then normal civil debt recovery procedures can be taken by local authorities to pursue recovery of that instalment, together with charging order fees and connected administrative or other expenses. Any additional interest that arises as a result of non-payment is recoverable by being added to the balance of the repayable amount, provision being made in that regard at paragraph 2(j) of Schedule 5A. Inserted section 46D(1)(c) confirms that any outstanding balance remaining after the final payment falls due is similarly recoverable by means of civil debt recovery procedures.

20. A mechanism for early repayment of the repayable amount is provided for at section 46D(2). Firstly, section 46D(2) confirms that an owner can at any time redeem the repayable amount early by paying to the local authority the repayable amount in full. Further, an owner can redeem the repayable amount early if they are able to reach agreement with the local authority on

an acceptable sum. Where it is not possible to do so, the Scottish Ministers can be asked to determine a sum. This can be done either generally by means of the order making power set out at section 46D(4), or specifically in relation to that charging order. Section 46D(3) obliges the local authority to discharge the charging order where payment in full of the repayable amount is made, or where payment of some other amount is made following agreement with the local authority, or after determination by the Scottish Ministers.

21. An order-making power is provided at inserted section 46D(4). This enables the Scottish Ministers to make further provision about repayment or early redemption of amounts repayable.

46E – Registration

22. Section 46E details the registration process for charging orders and discharges, in particular the local authority's obligations in that regard (46E(1) and (5)), the effect of registration (46E(2),(3) and (6)), and enforceability of charging orders (46E(4)). A charging order (and discharge of such an order) requires to be registered by the local authority in the appropriate land register.

23. In regard to enforceability the general position is that a charging order which has been registered can be enforced by the local authority against anyone who obtains title to the charged building. An exception is provided in the circumstances described in section 46E(4). That is, where a third party (or a person deriving title from that third party) has acquired right to the charged property, whether or not title has been completed, and has done so in good faith and for market value, before the charging order is registered. In those particular circumstances, a charging order would not be enforceable against the third party concerned, or anyone whose title to the charged building derives from that third party.

Section 1(c) – Appeals

24. Section 1(c) of the Bill provides that charging orders can be appealed in certain circumstances. It does so by way of insertions to the existing appeal provisions in the 2003 Act, which are set out at section 47. Section 47(1) lists various actions under the 2003 Act (relating to specified decisions or notices) which under section 47(3) an aggrieved person can appeal. Such appeals are made to the sheriff, by way of summary application made within 21 days of the relevant decision or notice. Section 1(c)(i) and (ii) extend this appeal right to charging orders made under section 46A or any decision in connection with such a charging order. By way of example, an appeal might arise in circumstances where there has been a recent change of owner, in the period following repair works being carried out and a charging order being sought. If that change is not acknowledged by the local authority then an owner may decide to appeal, under reference to section 46E(4).

25. Section 1(c)(iii) places certain restrictions on the right of appeal against a charging order. Inserted subsection (3A) provides that questions cannot be raised about matters which might have been raised earlier, on an appeal against the original notice or the decision requiring the works to be carried out.

26. Section 1(c)(iv) provides that a charging order or a decision in connection with a charging order does not take effect until the appeal period has elapsed or an appeal which is brought has been concluded.

Section 1(d) – Orders and regulations

27. Section 54 of the 2003 Act provides that any power of the Scottish Ministers to make orders or regulations under that Act is to be exercisable by statutory instrument. Certain specified orders are subject to the affirmative procedure. Otherwise, the negative procedure is to apply to orders or regulations made under the 2003 Act. Section 1(d) amends section 54 so as to provide that an order made under section 46D(4) of the Bill (which makes further provision about the repayment of amounts payable under a charging order), is to be subject to the affirmative procedure.

Section 1(e) – Schedule 5A

28. Schedule 5A, introduced by section 46A, sets out what is to be contained within a charging order and discharge. The essential information to be contained in a charging order is listed at paragraph 2 and, for a discharge, at paragraph 6. A charging order must also state the details set out at paragraph 3. Under paragraph 4 the local authority has some limited discretion to include other provisions within a charging order. These must however be of a minor or incidental nature only.

Section 2 – Commencement

29. This section provides for commencement of the Bill. Section 2 and 3, and section 1(b), so far as it concerns the provisions relating to subordinate legislation, come into force the day after Royal Assent. This is to enable the Scottish Ministers to put any provision under the latter section in place before commencement of the remainder of the Bill six months later.

FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill introduced in the Scottish Parliament on 30 October 2013. It has been prepared by the Non-Government Bills Unit (NGBU) on behalf of David Stewart, the member in charge of the Bill, to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill ("the Bill") amends the Building (Scotland) Act 2003 ("the 2003 Act") to provide the framework for local authorities to make charging orders for recovery of expenses incurred where local authorities have carried out work to defective or dangerous buildings under the 2003 Act. The Bill:

- provides the means for expenses incurred by local authorities in the repair, securing or demolition of defective or dangerous buildings to be recovered by way of charging order;
- specifies recoverable expenses to include local authorities' works costs, registration and discharge fees for a charging order and administrative expenses incurred in connection with arranging the registration and discharge of a charging order, and interest;
- sets out the required contents of a charging order;
- provides for the registration, repayment (including early redemption), and discharge of charging orders; and
- provides for a charging order to be appealed in certain circumstances.

BACKGROUND

3. The purpose of this Financial Memorandum is to set out the best estimates of the administrative, compliance and other costs to which the provisions of the Bill will give rise and an indication of the margins of uncertainty in these estimates.

4. The costs associated with the provisions of the Bill can be separated into four broad categories:

- costs associated with local authorities administering and implementing the charging order scheme;
- costs incurred by the Scottish Ministers when determining early redemption amounts;
- costs related to appeals against charging orders;
- costs resulting from the application of a charging order.

General comment on the financial implications of the Bill provisions

5. The Bill augments the range of cost recovery powers available under the 2003 Act. The new provisions are designed to have minimal ongoing and one-off costs. The Bill is also intended to place no significant new burdens or duties on the Scottish Government or local government. The greater impact will fall on building owners (whether of dwellings or non-domestic premises) who have not paid expenses owed to local authorities for repair work.

6. The primary aim of the Bill is to enhance the ability of local authorities to recover debts they have incurred when repairing defective or dangerous buildings. The new powers are intended to allow authorities greater flexibility and discretion about how to recover their costs, and to increase the proportion of those costs likely to be recovered.

7. Direct costs of implementing the Bill fall primarily upon local authorities administering the scheme, with some marginal costs to be met by the Scottish Government and the Scottish Court Service. There will be some financial impact on individuals and businesses, but only as a result of non-payment of an existing debt. While there is a cost burden on owners, the work carried out will, in some cases, have contributed to the integrity of the fabric or structure of the building and, as a consequence, have had a positive impact on the value of the property.

8. Before the costs associated with the implementation of the Bill are more fully explained, it is helpful to consider the general level of disrepair of Scotland's built environment. It is also useful to consider which local authority areas are most affected to understand the frequency with which local authorities carry out urgent work at their own hand and where owners have failed to undertake the work specified in a notice.

Number of buildings in Scotland

9. The term "building" incorporates many different structures which can be used for different purposes. The buildings referred to in this memorandum are dwellings, which contain either a single household space or several household spaces sharing some facilities. Dwellings will be recorded on the local authority council tax billing system and non-domestic premises which are used for commercial purposes will have an entry on the local authority Assessors valuation roll.

Housing

10. The estimated number of dwellings in Scotland as at 2012 was 2,515,042.¹ The 2011 figure was 2,500,849.² These figures take account of individual dwellings within buildings.

Non-domestic premises

11. It is more difficult to establish the number of non-domestic premises in Scotland, although the Scottish Government's Building Standards Division conducted research in 2010,

¹ General Register Office for Scotland, Estimates of Households and dwellings in Scotland, 2012. Available at: <http://www.gro-scotland.gov.uk/statistics/theme/households/estimates/2012/tables.html>

² General Register Office for Scotland, Estimates of Households and dwellings in Scotland, 2011. Available at: <http://www.gro-scotland.gov.uk/statistics/theme/households/estimates/2011/tables.html>

Mapping the Non-Domestic Building Stock in Scotland, to inform a database of these premises. This research estimated there were around 213,770 non-domestic premises in Scotland at February 2010.³ This information indicates premises and not the number of actual buildings.

Other buildings

12. Under section 55 of the 2003 Act the definition of a building is wide and includes “any structure or erection, whether temporary or permanent” subject to certain exceptions, such as public or private roads. However, the definition could nonetheless extend to a very diverse range of structures, making it impossible to quantify the number. It should be noted that references under the 2003 Act to a building also include references to a part of the building.

13. A rough estimate of the number of buildings (dwellings and non-domestic premises combined) in Scotland would therefore be 2,729,000. However, it is important to note that some buildings (e.g. tenements, industrial units) contain a number of separate dwellings or premises where one single owner or, a number of owners, might be responsible for the maintenance of the building.

Volume of disrepair and areas most affected

14. All building owners have a general responsibility to maintain their property, although there are a number of different statutes⁴ under which local authorities can carry out works to buildings and seek to recover their expenses. The principal pieces of legislation are the 2003 Act, as already mentioned, and the Housing (Scotland) Act 2006 (“the 2006 Act”). It is for local authorities to decide, taking into account the specific circumstances, which legislation is the most appropriate.

15. For the purpose of identifying the level of disrepair and the local authority areas most affected by disrepair it is useful to focus on the number of notices served under the 2003 Act and the 2006 Act, together with the most recent Scottish House Condition Survey.

16. Section 172 of the 2006 Act provides for a form of charging order (known as a “repayment charge”). This provision came into force on 1 April 2009. In response to the member’s Parliamentary Question, the Keeper of the Registers of Scotland advised “Since 1 April 2009, 38 repayment charges have been registered in the Land Register and 12 recorded in the Register of Sasines. As at 14 November 2012, a further 23 repayment charges are the subject of pending applications for registration in the Land Register”.⁵

Defective buildings

17. In terms of defective buildings, under section 28 of the 2003 Act the local authority has the power to serve a defective building notice on an owner requiring them to rectify the defects to bring the building into a reasonable state of repair. The local authority may undertake the

³ Scottish Government – Mapping the Non-Domestic building stock of Scotland, Scoping study report 2010, page 32. Available at: <http://www.scotland.gov.uk/Resource/Doc/217736/0121529.pdf>

⁴ For example, the Civic Government (Scotland) Act 1982 (section 87(3)) or the Town and Country Planning (Scotland) Act 1997 (section 179).

⁵ [Question S4W-11173: David Stewart, Highlands and Islands, Scottish Labour, Date Lodged: 12/11/2012](#)

work where the owner fails to carry out the work specified in the notice, and can recover from the owner expenses incurred by it in doing so.

18. In response to a Parliamentary Written Question⁶ the Scottish Government advised that the number of defective buildings notices served by local authorities during 2010-11 was 96. According to the written answer only nine councils had issued notices. Local authorities for Renfrewshire (25), North Lanarkshire (24), the Scottish Borders (17) and the Highlands (13) accounted for 79 (i.e. 82%) of the notices issued.

19. By 2011-12 the number of defective buildings notices issued had risen to 206 – a 115% increase from the previous year. These 206 notices were issued by 15 local authorities, with the highest number issued by East Renfrewshire (157), followed by North Lanarkshire (14) and the Scottish Borders (12). East Renfrewshire alone accounted for 76% of the notices issued. It is not known why East Renfrewshire issued such a large number of defective building notices.

20. A detailed breakdown of the figures for defective building notices can be found in Table 1 of the Annexe.

Dangerous buildings

21. Local authorities have a statutory obligation to deal with dangerous buildings under sections 29 and 30 of the 2003 Act. Under section 29, where the local authority considers that urgent action is required to reduce or remove any danger to people in or around the building, the general public or to adjacent buildings or places, it can carry out any necessary work. It may then recover expenses incurred in doing so from the owner. Section 30 enables local authorities to serve a notice on owners to undertake work the local authority considers necessary to remove the danger. Where owners fail to carry out the works they may be guilty of an offence and on summary conviction would be liable to a fine not exceeding level 5 on the standard scale (currently £5,000).

22. A recent answer to a Parliamentary Question⁷ shows that, in 2010-11, 187 dangerous buildings notices (section 30) were issued by 26 local authorities. Six local authorities, Midlothian (21), Highland (18), West Lothian (18), North Lanarkshire (17) Aberdeenshire (15) and Renfrewshire (10), accounted for just over half (53%) of the notices issued.

23. By 2011-12 the number of dangerous buildings notices issued had risen to 212. These 212 notices were issued by 27 of Scotland's 32 local authorities. Nine local authorities, North Lanarkshire (29), West Lothian (20) Renfrewshire (18), East Ayrshire (15), Clackmannanshire (14), South Ayrshire (14), Midlothian (10), North Ayrshire (10) and Scottish Borders (10) accounted for nearly two-thirds (66%) of the notices issued.

24. The Building Standards Annual Return 2010-2011 highlights that the largest number of notices served under the 2003 Act was for dealing with dangerous buildings. It states that on

⁶ [Question S4W-13217: Liz Smith, Mid Scotland and Fife, Scottish Conservative and Unionist Party, Date Lodged: 21/02/2013](#)

⁷ [Question S4W-13217: Liz Smith, Mid Scotland and Fife, Scottish Conservative and Unionist Party, Date Lodged: 21/02/2013](#)

402⁸ occasions local authorities took action at their own hand (section 29), compared to 187 dangerous buildings notices and 96 defective buildings notices issued under the 2003 Act in the same time period. This equates to 59% of all instances (685) under the defective and dangerous buildings regime. Comparable figures for 2011-12 show that there were 992⁹ occasions when local authorities took action at their own hand (section 29), compared to 212 dangerous buildings notices and 206 defective buildings notices. This equates to 70% of all instances (1410) under the defective and dangerous buildings regime, an 11% increase on the previous year.

25. A detailed breakdown of the figures for dangerous building notices can be found in Table 2 of the Annexe.

Dwellings in disrepair

26. According to the Scottish Housing Condition Survey (SHCS) for 2011, it is estimated that 83% of dwellings in Scotland have some disrepair. The Survey also indicated that levels of “any disrepair” in urban and rural areas are about the same.¹⁰ In just under half the dwellings (48%) with some form of disrepair, that disrepair was urgent.¹¹ The definition of an urgent repair in the SHCS is one which, if not carried out, would cause the fabric of the building to deteriorate further and/or place the health and safety of the occupier at risk.

27. It is possible to roughly calculate the number of dwellings in urgent disrepair. Using information available for 2011 on number of dwellings in Scotland, 2,500,849 (see paragraph 10) and the percentage of dwellings with some disrepair in Scotland, 83% (see paragraph 26) it can be estimated that 2,075,705 dwellings have some disrepair. Of those dwellings that have some disrepair, the level of those in urgent disrepair is around 48% (see paragraph 26). It is therefore possible to estimate that approximately one million dwellings in Scotland (996,338) are in urgent disrepair, based upon the SHCS definition of “urgent repair”. This represents 40% of all dwellings in Scotland.

28. In terms of the most affected areas, there does not seem to be any obvious correlation between the areas most affected by disrepair other than the condition of the built environment. The Scottish Government research report noted that “there are very sharp differences between authorities in levels of activity. For example, South Ayrshire reported 38 instances of action (section 29 action without notice) while North Ayrshire reported one. Levels of action were notably high in Dundee, Renfrewshire and Glasgow. This may reflect the condition of the built environment in those areas”.¹² The Report went on to state “It is not clear why such sharp differences exist but they do suggest that recording may vary. It was also found in the case studies reported below that in some authorities emergency action on dangerous buildings is frequently undertaken by the Fire Service and is thus not recorded as action by Building

⁸ Building Standards Annual Return 2010-11, Building Services Division, Page 17, paragraph 11.5. Available at: <http://www.scotland.gov.uk/Resource/0040/00401521.pdf>

⁹ Question S4W-17343: David Stewart, Highlands and Islands, Scottish Labour, Date Lodged: 20/09/2013

¹⁰ Scottish Housing Conditions Survey – Key findings 2011, paragraph 143, page 44. Available at: <http://www.scotland.gov.uk/Resource/0041/00410389.pdf>

¹¹ Scottish Housing Conditions Survey – Key findings 2011 paragraph 149, page 44, Available at: <http://www.scotland.gov.uk/Resource/0041/00410389.pdf>

¹² The Building Scotland Act 2003, para 2.1.5, [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

Standards”.¹³ However, it is also noted from the figures outlined in paragraphs 22 and 23 that the cities of Glasgow, Aberdeen and Dundee do not issue as many section 30 notices as, for example, North Lanarkshire or the Scottish Borders. This could be attributed to the condition of the built environment in those particular areas or the local policies being implemented. It is also worth noting that Edinburgh has its own private legislation¹⁴ so tends not make use of the 2003 Act’s defective and dangerous buildings notices regime.

Estimated number of charging orders

29. Defective and dangerous buildings notices under the 2003 Act are served on owners of buildings; so for example, in a tenement building with eight owners, eight notices will be issued. On the other hand, in relation to a block of flats owned by one person, only one notice would be issued. A notice therefore corresponds directly to the owner and not to the number of buildings. Where a local authority takes action at its own hand i.e. does not have time to give notice to the owner before undertaking the work, then this also directly correlates to the number of potential charging orders, as local authorities tend not to issue notices having taken action without notice.

30. Using the most recent dangerous buildings figures for 2011-12, where the number of times a local authority took action at its own hand in relation to a dangerous building on 992 occasions, and a further 212 dangerous building notices were issued, it is possible to estimate the possible number of charging orders relating to dangerous buildings. The maximum number of potential dangerous buildings cases where local authorities might have to recover their costs would be 1204. The Scottish Government – *Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings*, November 2012 estimates cost recovery to be around 50%.¹⁵ On that basis it seems conceivable that around 600 charging orders in respect of dangerous buildings might be registered each year.

31. In relation to defective buildings notices, 206 were served in 2011-12. Local authorities do not tend to undertake work on these buildings as they don’t have a statutory obligation to do so, however, local authorities might be encouraged to be more proactive if charging orders are available to them. Applying the estimated 50% cost recovery rate to this figure it seems conceivable that a further 100 charging orders might be made in relation to defective buildings.

32. Therefore a rough Scotland-wide figure is calculated to be 700 charging orders registered in total annually. This figure might be substantially lower if local authorities decide not to make use of charging orders in all cases where debt is to be recovered or find the notification of an intention to apply a charging order leads to more owners paying. Equally it might increase if local authorities take a more proactive approach to defective buildings.

¹³ The Building Scotland Act 2003, para 2.1.6, [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

¹⁴ City of Edinburgh District Council Order Confirmation Act 1991 – contains provisions for dealing with dangerous and defective buildings.

¹⁵ Recommendations for change, para 4.7.3, [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

COSTS ON THE SCOTTISH ADMINISTRATION

33. Under the Bill, inserted section 46D(2)(b) provides for the Scottish Ministers to determine the early settlement sum where an owner is unable to agree a sum with the local authority to redeem the repayable amount. They can do so either generally by order made under the power contained in section 46D(4) of the Bill, or specifically in relation to that charging order. On payment of such a settlement sum a local authority is obliged to register a discharge of the charging order.

34. The Scottish Ministers may make further provision about repayment or early redemption of the repayable amount (inserted 46D(4)). This might conceivably include stipulating the procedure to be followed in determining the early settlement sum such as any timescales or relevant factors to be considered in coming to a decision. In the absence of a specified procedure in the Bill, it is envisaged that, where agreement cannot be reached a referral might be made to the Scottish Ministers for determination. The local authority and the owner would each provide a separate submission detailing its own case, providing sufficient information (including any supporting evidence); to enable the Scottish Ministers to make a decision.

35. The 2006 Act has a comparable provision at section 172 (Repayment Charges). It is understood that to date this provision has not been used; as such there are no actual costings available. In estimating the cost, reference would ordinarily be made to the financial memorandum for that Act; however, as the provision was inserted at Stage 3 of Parliamentary proceedings for the legislation concerned, no estimated costs are available.

36. Therefore in terms of estimating the cost of the determination process this memorandum relies on similar processes. The Directorate for Planning and Environmental Appeals (DPEA) is responsible for the administration of over 20 different types of case work. It determines appeals against decisions made by planning authorities and other bodies in Scotland. Most cases are decided by a Reporter (at civil service grade C1 or C2), with a caseworker (A3 or A4) undertaking the administrative aspects of the case. Another recent legislative example is the Schools (Consultation) (Scotland) Act 2010 which provides for Ministerial call-in of closure proposals.

37. The determination of cases under this Bill is unlikely to be as complex a matter as planning appeals or school closures. The following calculation is the member's best attempt at estimating the cost of determining a case. This is of course speculative given the lack of base data but has been calculated using acknowledged formulas for working out daily and hourly rates and the maximum on current Scottish Government pay scales. It is therefore estimated that the overall average time required per case would be around three days in total, consisting of a day of C1's time and two days of an A3's time. Based on a C1's annual salary as at August 2013 of £53,121 at an approximate daily rate of £180 (salary divided by 52 weeks, further divided by 42 contracted hours which equals £24.30/hour then multiplied by 7.4 hours gives a daily rate of £180.) A similar calculation based on an A3's yearly salary of £18,382, yields an hourly rate of £8.40 and a daily rate of £62. The cost per determination is therefore roughly £304.

38. The broadly comparable provision in the 2006 Act came into force on 1 April 2009 and at the time of writing Registers of Scotland advised 125 "repayment charges" have been registered.

As previously noted there have been no determinations under section 172 of the 2006 Act during this time (see paragraph 35). This might suggest that certainly in the short term the new role could fairly readily be subsumed within the existing work of the Scottish Government, perhaps within the Building Standards Division which has responsibility for the 2003 Act, if a case arises. There is insufficient historic information to estimate whether the number might be expected to rise over the longer term.

Costs to the Keeper of the Registers of Scotland

39. Registers of Scotland (RoS) is the only Non-Ministerial Department in the Scottish Administration that operates as a trading fund. This means that RoS must operate as a self-funded entity. This funding is derived from the fees charged in respect of the registration or recording of deeds and documents in any register under the management and control of the Keeper, and in the provision of other services such as searches, reports, certificates and the provision of other documents or copies of documents. Current legislation¹⁶ empowers the Keeper of the RoS to charge fees to recover its operational costs, so RoS would recover its operational costs for registering and discharging charging orders as a fee for the service.

40. It is estimated that the costs to register or discharge a charging order as provided for in the Bill would be £60 in each case (or £50 if the charge is registered using the automated registration system). This is based on the current fees for registering, or discharging, a “repayment charge” in the appropriate land register under the 2006 Act. The fees set by RoS are calculated to cover its costs. It is estimated that the annual registration costs would be £35,000 based on the registration of 700 charging orders (using a figure of £50 per registration or discharge of each charging order).

41. It is understood that of the 125 “repayment charges” registered under the 2006 Act since 2009, there have been 17 discharges. These figures can be interpreted to provide a broad indication of the number of potential discharges which can be expected in the early years of charging orders under this Bill. The percentage of registrations (125) to discharges (17) is approximately 14%. This percentage, applied to the potential 700 charging orders, indicates that roughly 98 discharges would be registered annually.

42. As the practicalities of registering or discharging a charging order are likely to involve the same level of work for RoS as that for “repayment charges”, it is believed that the estimated costs are reasonably accurate.

Costs to the Scottish Court Service

43. As referred to earlier in the Memorandum, the Bill amends section 47 of the 2003 Act to allow an appeal against the making of a charging order. These appeals are restricted to matters which could not have otherwise been raised on an appeal against the original notice or the decision requiring the works to be carried out. An appeal against a charging order on the basis of the cost of the work or the apportionment of costs, if this information was known earlier, would generally be unlikely to be possible.

¹⁶ Land Registration etc. (Scotland) Act 2012, section 110. Available at: <http://www.legislation.gov.uk/asp/2012/5/section/110/enacted>

44. An example of the circumstances which might lead to an appeal would be where a change of ownership has taken place in the period between when the costs were incurred by the former owner and the decision was taken by a local authority to seek a charging order. The new owner might contest a charging order on the basis that they were not aware of any work having been carried out by the local authority or outstanding debts to the local authority when they purchased the property. While section 46E(4) of the Bill takes account of this situation, the local authority might not appreciate what has happened or may not readily accept what is being stated by the new owner. The person might therefore decide to appeal the charging order to allow the court to determine liability. Any appeal would be by summary application to the sheriff and should be made within 21 days of the date of the charging order or any decision in connection with it.

45. The number of appeals to sheriffs principal initiated during 2011-12 decreased by 29% from 441 in 2010-11 to 313. Of the appeals initiated, 69 per cent were appeals of ordinary cause cases, 18 per cent were appeals of summary cause cases and 13 per cent were appeals of small claim cases. The number of appeals to sheriffs principal that were disposed of was almost static between 2010-11 (334) and 2011-12 (330). The original judgment was adhered to in 47 per cent of appeals disposed of in 2011-12 and was recalled or varied in 22 per cent of disposals, a decrease of 10 percentage points compared to 2010-11.¹⁷

46. These statistics do not further classify the appeals in relation to the legislation under which the appeal was made. It is therefore not possible to provide any estimate for dangerous and defective buildings. However, it is anticipated that the number of appeals will be low given the overall number of appeals for Scotland annually and the limited circumstances upon which an appeal could be pursued. It is therefore anticipated that there would be minimal costs. As such it is believed that any cost associated with hearing appeals could be absorbed within the Scottish Court Service's budget.

COSTS ON LOCAL AUTHORITIES

47. Currently local authorities can incur costs in carrying out their statutory duties under sections 28, 29 and 30 of the 2003 Act. These costs could include fees to contractors, for example for the erection of fencing to keep people away from dangerous buildings or contractor costs for roofing or demolition works, and any associated administration charges. If the owner does not pay these costs then, under the 2003 Act, the authority can pursue the debt in the civil courts or, for dangerous buildings where the owner cannot be found, it may seek a compulsory purchase order for the building and the site (section 45).

Current local authorities works expenditure and level of cost recovery

48. The Scottish Government Building Standards Division commissioned Optimal Economics Ltd to undertake a study aimed at identifying ways to improve the recovery by Scottish Local Authorities (LAs) of costs incurred on work to deal with dangerous and defective

¹⁷ Civil Law Statistics in Scotland 2011-12, Sheriff Court Appeals, para 10.5-6. Available at: <http://www.scotland.gov.uk/Publications/2012/12/9263/downloads>

buildings under the Building (Scotland) Act 2003. The project sought information from eight¹⁸ local authorities about their expenditure on works and the level of recovery of their costs. The most complete information came from Glasgow City Council, Renfrewshire Council and Fife Council:

- Glasgow City Council – 6 years’ expenditure, including 2011-12, was approximately £1.3 million, with expenditure for 2012-13 likely to be around £400,000.¹⁹ No indication was provided on the level of cost recovery.
- Renfrewshire Council – 5 years’ expenditure (time period unclear) was £618,000. The amount of that cost recovered amounted to £358,000 (58%), £114,800 (19%) was written off²⁰ and approximately £145,200 (23%) remains outstanding.
- Fife Council - 7 years’ expenditure, including 2011-12, was £629,900 with £226,000 (36%) recovered.²¹

49. The project estimated that the total unpaid debts of the eight case study authorities amounted to £1.5 million and that, when calculated pro rata to population, the all-Scotland figure would be £3.9 million, although it acknowledged a high margin of uncertainty given the degree in variation of debt between authorities.²²

50. In its recommendations, the research project noted current cost recovery procedures “appear to allow as much as 50% of costs to be avoided or evaded by owners of dangerous or derelict buildings” and recommended an “improvement on 50% cost recovery would be desirable”.²³ The local authorities involved in the Scottish Government’s research project advised the main reasons for problems of cost recovery “often arise where there is difficulty in establishing who is liable and for how much. This includes problems of identifying and tracking down owners and determining apportionment. Even when ownership and liability can be established, cost recovery problems arise in terms of what may be characterised as either “can’t pay” or “won’t pay” (or both). In some cases these issues are interrelated: for example disputes over apportionment may fuel unwillingness to pay while hard to identify or absentee owners are using these circumstances to avoid payment”.²⁴

¹⁸ Dundee City Council, Edinburgh City Council, Fife Council, Glasgow City Council, Highlands Council, Perth and Kinross Council and Renfrewshire Council

¹⁹ Extent of cost recovery, para 4.4.2 – 3, [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

²⁰ Extent of cost recovery, para 4.4.4, [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

²¹ Extent of cost recovery, para 4.4.5, [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

²² Extent of cost recovery, para 4.4.10, [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

²³ Recommendations for change, para 4.7.3, [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

²⁴ Experience in Cost Recovery, para 4.3. 11, [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

51. The project also concluded that the estimate of unrecovered costs for the eight local authorities would probably exceed £2 million if written-off debts were included and that these costs would be growing year on year by several hundreds of pounds.²⁵

Current civil debt recovery costs

52. Local authorities' current costs of pursuing owners through the courts vary depending on whether the owner can be located or whether there are multiple owners which can give rise to disputes over apportionment of the costs. For example, one council is owed around £400,000 by an owner who is believed to be resident in the United States and who shows no intention of paying the debt.²⁶

53. Problems identifying owners can be tackled through the use of legal searches. Owners who are absent present particular problems in securing payment. However, the costs involved in undertaking extensive tracing can be expensive and can typically cost up to £500²⁷ to engage a firm of professional searchers to track down title.

54. According to the response provided by North Lanarkshire Council to the Scottish Government's consultation on the proposed Community Empowerment and Renewal Bill, local authorities can spend up to £5,000²⁸ in staff time and legal costs pursuing the debt through the courts. Where multiple owners are involved local authorities' recovery costs rise, particularly when apportionment disputes arise. These concerns were highlighted in a recent research project, where local authorities criticised the current arrangements because even with so called "normal cases" the administrative costs incurred by the local authority of identifying owners and apportioning costs were high and could rise to very high levels if legal action was required.²⁹

55. It is also noted that local authorities' attitude to small debt can vary. Some take the view that, on principle, all debts should be pursued vigorously while others will write off small debts (£100-£300) when the costs of debt collection or legal action appear disproportionate.³⁰

Anticipated costs in implementing charging orders

56. As noted at paragraph 53, the cost of tracing title and ownership, where this cannot readily be established, can cost up to £500. There may be a need to do so when pursuing

²⁵ Conclusions and recommendations, Key Findings para 5.1. 3, [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

²⁶ The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012

²⁷ Scottish Borders Council response to Keeping Scotland Safe, The Building Repairs (Scotland) Bill Consultation – David Stewart MSP, Response to Question 1. Available at: <http://www.davidstewartmsp.org.uk/consultation/consultationsummary.pdf>

²⁸ North Lanarkshire Council response to The Scottish Government – Community Empowerment and Renewal Bill Consultation. Available at: <http://www.scotland.gov.uk/Resource/0041/00412094.pdf>

²⁹ Scottish Borders Council response to Keeping Scotland Safe, The Building Repairs (Scotland) Bill Consultation – David Stewart MSP. Available at: <http://www.davidstewartmsp.org.uk/consultation/consultationsummary.pdf>

³⁰ Experience in cost recovery, para 4.3.7 [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

payment of the debt by means of civil recovery procedures, and similarly in relation to the process associated with obtaining a charging order.

57. The Bill enables local authorities to register a charging order against the property. The fee for registering or discharging a “repayment charge” in the appropriate land register under the 2006 Act is currently £60 (or £50 if the charge is registered using the automated registration system). It is therefore anticipated that the registration or discharge of a charging order would have a similar cost. A local authority will incur some staff costs as a result of issuing a letter to notify an owner of its intention to make a charging order and from preparing a charging order for registration. It has not been possible to gather specific information on these costs but it is estimated the overall cost of the process would be around £60 as the local authority should already hold the necessary information such as the property address to enable registration. Although the local authority will be responsible for these upfront costs, the Bill provides for these costs to be recovered from the owner through the charging order. Fees and expenses are likely to amount to approximately £110 per charging order. Based on that estimate, the overall annual cost split across the 32 local authorities would be £77,000 (based on an estimated number of 700 charging orders per annum and using a registration fee figure of £50).

58. It is understood that of the 125 “repayment charges” registered under the 2006 Act since 2009 (see paragraph 38), there have been 17 discharges. These figures can be interpreted to provide a broad indication of the number of potential discharges which can be expected in the early years of charging orders under this Bill. The percentage of registrations (125) to discharges (17) is approximately 14%. This percentage, applied to the potential 700 charging orders indicates that roughly 98 discharges annually costing £50 each will be sought across the 32 local authorities, amounting to a total of £4,900.

59. Further costs might arise for local authorities as a result of defending any appeals against the making of a charging order. The Bill amends section 47 of the 2003 Act to allow appeals against the making of a charging order in limited circumstances. Nothing could be raised at an appeal which could have been raised at an earlier stage, for example, in regard to the original notice or decision requiring the work concerned to be carried out. Appeals are therefore expected on a very occasional basis only. It has not been possible to ascertain local authority costs in defending an appeal of a section 28 or 30 notice. It is therefore estimated that costs could be the same or less than those incurred by a local authority pursuing the original debt through the court (up to £5,000 see paragraph 54). This is because it is difficult to assess what complexities might arise during the course of any appeal.

60. By opting to use charging orders to recover costs local authorities could accrue some savings. It is estimated that local authorities collectively lose about £3.9m/year (see paragraph 49) in unrecovered debt, and will be paying a certain amount (not estimated) for attempting debt recovery through the courts. Appeal costs are likely to be minimal, so it is anticipated that the Bill will save local authorities money overall. If, for example, charging orders enable local authorities to get their rate of cost recovery up from about 50% to (say) 75%, this could save them nearly £2m annually, plus whatever they save by making less use of existing methods of debt recovery. There is no information available, other than anecdotal information provided to the member’s consultation, on the use local authorities made of charging orders under the Building (Scotland) Act 1959, which the 2003 Act repealed and replaced. This figure is therefore only illustrative of the savings which could be achieved if cost recovery rates increased.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Costs to the Scottish Legal Aid Board (SLAB)

61. Given that the estimated number of appeals under the Bill is very small, it is anticipated that requests for legal assistance will be low. An appellant can opt to conduct their appeal themselves without legal representation. There would only be a cost to SLAB if an appellant wished to instruct legal representation and was eligible for assistance. In these circumstances it is envisaged that there would be minimal costs and therefore should be capable of being absorbed into the budget of the Scottish Legal Aid Board.

Cost on individuals and businesses

62. Owners of domestic or non-domestic buildings who keep their property in good order will not be affected by this legislation.

Number of owners affected

63. Defective and dangerous buildings notices under the 2003 Act are served on owners of buildings; so for example, a tenement building with eight owners would mean eight notices would be issued. Conversely where a block of flats is owned by one person then only one notice would be issued. A notice therefore corresponds directly to the owner and not to the number of buildings. Where a local authority takes action at its own hand i.e. does not have time to give notice to the owner before undertaking the work, then this also directly correlates to the number of potential charging orders, as local authorities tend not to issue notices having taken action without notice.

64. Using the most recent dangerous buildings figures for 2011-12, where the number of times a local authority took action at its own hand in relation to a dangerous building on 992 occasions, and a further 212 dangerous building notices were issued, it is possible to estimate the possible number of charging orders relating to dangerous buildings. The maximum number of potential dangerous buildings cases where local authorities might have to recover their costs would be 1204. The Scottish Government – *Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings*, November 2012 estimates cost recovery to be around 50%.³¹ On that basis it is anticipated that around 600 charging orders in respect of dangerous buildings would be registered each year.

65. In relation to defective buildings notices, 206 were served in 2011-12. Local authorities do not tend to undertake work on these buildings as they don't have a statutory obligation to do so, however, local authorities might be encouraged to be more proactive if charging orders are available to them. Applying the estimated 50% cost recovery rate to this figure means approximately a further 100 charging orders could be made in relation to defective buildings.

66. Therefore potentially 700 owners could be affected by the implementation of the Bill on an annual basis. It is recognised that this figure could decrease or increase depending on whether

³¹ Recommendations for change, para 4.7.3, [The Scottish Government – Research Project to identify a cost recovery mechanism for local authorities dealing with dangerous and defective buildings, November 2012](#)

local authorities choose to use charging orders (the notification of a charging order might aid in negotiating settlement of the debt) or become more proactive in dealing with defective buildings.

67. It is not possible to calculate with any certainty the number of charging orders applied to dwellings and those to non-domestic premises. However as a very rough indication, in 2010 there were 2,488,496³² dwellings in Scotland compared to 213,770³³ non-domestic premises. This represents a ratio of 11:1 which, when applied to 700 charging orders, would mean there would be approximately 636 charging orders on dwellings and 64 in respect of non-domestic premises.

Fees and expenses recoverable

68. Where local authorities undertake work to defective or dangerous buildings when owners can't or won't pay, they can make charging orders to recover their costs. An owner will be liable for the registration or discharge fee (approximately £50-60 each) over and above the local authorities' costs for carrying out the repair.

69. A local authority's expenses relating to implementing a charging order will also be recoverable. A local authority will incur some staff costs as a result of issuing a letter to notify an owner of its intention to make a charging order and from preparing a charging order for registration. It has not been possible to gather specific information on these costs but it is estimated the overall cost of the process would be around £60 as the local authority should already hold the necessary information such as the property address to enable registration.

70. Interest is accrued on the outstanding debt and this will also be repayable. It is for each individual local authority to set the applicable interest, which must however be a reasonable rate. Various formulations have been used in other circumstances where a local authority is entitled to recover interest: one approach is to set a percentage figure above the base rate, while others may take an average of all the interest rates they apply and review it annually. If a person defaults on an annual instalment, then interest will also be separately accrued on that outstanding amount.

71. Under the appeal provisions in section 47 of the 2003 Act the sheriff can make any order the sheriff thinks fit. The cost of lodging an appeal by summary application is currently £87.³⁴ An appeal case can be conducted by the appellant without representation. The Law Society does not set guidelines for fees. Each firm charges what it believes is appropriate. Some solicitors charge a fixed fee for the whole job, others charge according to how much time they actually spend doing the work.³⁵ It is therefore not possible to provide an estimate of the cost of engaging representation. Depending on the appellant's circumstances they could receive assistance with this cost from the Scottish Legal Aid Board. It is anticipated that costs incurred in relation to an appeal would be dealt with in the usual manner, according to which party is successful.

³² General Register Office for Scotland, Estimates of Households and dwellings in Scotland, 2010. Available at: <http://www.gro-scotland.gov.uk/statistics/theme/households/estimates/archive/2010/list-of-tables.html>

³³ Scottish Government – Mapping the Non-Domestic building stock of Scotland, Scoping study report 2011, page 32. Available at: <http://www.scotland.gov.uk/Resource/Doc/217736/0121529.pdf>

³⁴ Schedule 2 of the [Sheriff Court Fees Amendment Order 2012 SSI 2012 No.293](#)

³⁵ The Law Society of Scotland, Fees. Available at: <http://www.lawscot.org.uk/forthepublic/what-the-society-can-do-for-you/legal-fees>

72. Any provision that enables local authorities to recover more of their costs reduces their net expenditure, and this should have some minor beneficial impact on individual council tax payers.

CONCLUSION

73. The member has set out his best estimates, based on the information available, of the administrative, compliance and other costs to which the provisions of the Bill will give rise. He has also provided an indication of the margins of uncertainty in relation to these estimates.

74. The costs of implementing charging orders are likely to be minimal for the Scottish Government and local authorities. The Bill has an overall positive financial impact for local authorities. The use of charging orders enables local authorities to improve their cost recovery rates to recover more of their outstanding costs, while also providing further savings over the existing cost recovery procedure. There is some impact on owners of dwellings or non-domestic premises where owners have not maintained their building and the local authority has had to step in to undertake the necessary work and recover its costs thereafter.

75. The table below summarises the estimated costs of implementing the Bill.

TOTAL OF ESTIMATED COSTS

Organisation	Description	Cost
Scottish Government	The Scottish Ministers to determine early settlement sum where an owner is unable to agree a sum with the local authority to redeem the payable amount under inserted section 46D(2)(b). Ministers may also make further provision about early redemption of the repayable amount (inserted section 46D(4)).	£304 - approximate cost per determination.
Keeper of the Registers of Scotland	Costs to register or discharge a charging order.	£35,000 – per annum. This is based on an estimate of 700 charging orders being registered per annum at a cost of £50 each. £4,900 – per annum based on an estimate of 98 discharges of charging orders at a cost of £50 each.
Scottish Court Service	Anticipated number of appeals to a charging order in	Based on the limited information available it is

These documents relate to the Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 30 October 2013

Organisation	Description	Cost
	relation to sections 28, 29 and 30 of the 2003 Act, which the Scottish Court Service would have to deal with.	anticipated that the number of appeals will be low. As such it is believed that the cost associated with hearing appeals could be absorbed within the Scottish Court Service's budget.
Local Authorities	The cost to a local authority of making a charging order against an individual or business.	£77,000 per year across all 32 local authorities. This is based on 700 charging orders issued per annum at a cost of £50 fee per charging order and associated £60 administrative expenses. £4,900 per year across 32 local authorities based on 98 discharges of charging orders.
Scottish Legal Aid Board	Potential number of applications for legal assistance to lodge an appeal in to a charging order.	As it is estimated that the number of appeals under the Bill is very small, it is anticipated that any requests for legal assistance could be readily absorbed into the budget of the Scottish Legal Aid Board.
Individuals and businesses	The cost charged to an individual or business by a local authority in relation to the registration of a charging order or discharge order. Lodging an appeal against a charging order.	£50 per charging order registered and associated £60 administrative expenses. £50 per charging order discharged £87 to lodge an appeal.

Table 1: Breakdown of Defective Building Notices

Local Authority	No. of Defective Notices Issued	
	2010-11	2011-12
Aberdeen City	4	3
Aberdeenshire	0	0
Angus	0	1
Argyll and Bute	0	0
City of Edinburgh	0	0
Clackmannanshire	0	0
Comhairle nan Eilean Siar	0	1
Dumfries and Galloway	0	0
Dundee City	0	0
East Ayrshire	0	0
East Dunbartonshire	0	0
East Lothian	0	0
East Renfrewshire	0	157
Falkirk	0	2
Fife	0	0
Glasgow City	0	0
Highland	13	3
Inverclyde	2	1
Midlothian	7	3
Moray	0	0
North Ayrshire	0	0
North Lanarkshire	24	14
Orkney	0	0
Perth and Kinross	3	3
Renfrewshire	25	0
Scottish Borders	17	12
Shetland Islands	0	0
South Ayrshire	0	0
South Lanarkshire	0	1
Stirling	0	1
West Dunbartonshire	0	2
West Lothian	1	2
Scotland	96	206

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Table 2: Breakdown of Dangerous Building Notices

Local Authority	No. of Notices – Dangerous Buildings	
	2010-11	2011-12
Aberdeen City	6	7
Aberdeenshire	15	9
Angus	2	2
Argyll and Bute	0	2
City of Edinburgh	0	0
Clackmannanshire	5	14
Comhairle nan Eilean Siar	2	5
Dumfries and Galloway	2	1
Dundee City	0	7
East Ayrshire	6	15
East Dunbartonshire	0	3
East Lothian	3	2
East Renfrewshire	6	0
Falkirk	5	8
Fife	8	0
Glasgow City	3	4
Highland	18	2
Inverclyde	4	7
Midlothian	21	10
Moray	2	6
North Ayrshire	6	10
North Lanarkshire	17	29
Orkney	0	0
Perth and Kinross	5	0
Renfrewshire	10	18
Scottish Borders	9	10
Shetland Islands	2	1
South Ayrshire	1	4
South Lanarkshire	8	14
Stirling	3	7
West Dunbartonshire	0	2
West Lothian	18	20
Scotland	187	212

MEMBER'S STATEMENT ON LEGISLATIVE COMPETENCE

On 30 October 2013, the member in charge of the Bill (David Stewart MSP) made the following statement:

“In my view, the provisions of the Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE COMPETENCE

On 30 October 2013, the Presiding Officer (Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 30 October 2013

DEFECTIVE AND DANGEROUS BUILDINGS (RECOVERY OF EXPENSES) (SCOTLAND) BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

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Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body
by APS Group Scotland.

ISBN 978-1-78392-004-4