



# Civic Government (Scotland) Act 1982

## 1982 CHAPTER 45

### PART VIII

#### BUILDINGS, ETC.

##### *Powers of entry, execution of works, etc.*

#### **99 Power to enter, execute works and recover expense.**

- (1) Where, under any notice served by a local authority under this Part of this Act, anything is required to be done by the owner or occupier of land or premises in relation to the land or premises an authorised officer of the local authority may, on the expiration of any period of time specified in the notice as that in which the thing has to be done, enter the land or premises to see if whatever is required to be done under the notice has been done.
- (2) Where—
  - (a) under any notice served by a local authority under this Part of this Act, anything is required to be done by the owner or occupier of land or premises in relation to the land or premises and the owner, or as the case may be, the occupier fails to do it in accordance with the notice; and
  - (b) there is no express provision in this Act, apart from this section, authorising the local authority to do whatever is required by the notice to be done,any person authorised by the local authority may enter the land or premises and do or cause to be done whatever is required by the notice to be done.
- (3) A person shall not be entitled to exercise the powers which he may exercise under subsections (1) or (2) above until he has produced his authorisation to do so to the person for the time being in charge of the land or premises.
- (4) Subject to subsection (7) below, a local authority shall be entitled to recover the expense of doing anything in relation to any land or premises under subsection (2) above from the owner or, as the case may be, the occupier of the land or premises

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but may remit any sum or any part of any sum due to them under this subsection as they think fit.

- (5) Where such expense as is mentioned in subsection (4) above is recoverable under that subsection from more than one person, the local authority may apportion such expense among them.
- (6) Where a local authority claim to recover any expense as is mentioned in subsection (4) above from a person and he proves that he—
- (a) is receiving the rent of the land or premises merely as trustee, tutor, curator, factor or agent for some other person; and
  - (b) has not, and since the date of service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,
- his liability shall be limited to the total amount of money which he has or has had in his hands as aforesaid.
- (7) Subsection (4) above does not apply in relation to any cleaning of common property done under subsection (2) above.
- (8) In this section and in sections 100 to 109 of this Act references to the occupier of land or premises include references to the occupier of common property within the meaning given to those expressions by section 92 of this Act.

## **100 Interest on expenses.**

Where under any provision of this Part of this Act a local authority is entitled to recover expenses, they shall also be entitled to interest thereon at such reasonable rate as they may determine from the date on which a demand for the expenses is served until payment but they may remit any sum or any part of any sum due to them as interest as they think fit.

## **101 Offences relating to powers of entry and carrying out of works.**

Any person who—

- (a) fails without reasonable excuse to permit—
  - (i) an authorised officer of a local authority who, in pursuance of sections 90(8), 91(1), 92(8) or 99(1) of this Act, demands to do so, to enter any land or premises; or
  - (ii) a person authorised by a local authority under section 87(3), 90(8), 91(1), 92(8) or 99(2) of this Act to enter any land or premises and do or cause anything to be done there who demands to do so or an owner of land, building or other premises or his contractors or workmen who having been authorised under section 88 or 104 or being entitled under section 91(1) of this Act to enter the land, building or other premises and execute work there demands or demand to do so, to enter the land, building or other premises and do there whatever is to be done; or
- (b) obstructs the entry in pursuance of this Act to any land or premises of, or the doing there in accordance with this Act of anything by, any such authorised officer or other person who has demanded so to enter or so to do that thing,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [F1 level 3 on the standard scale].

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### Textual Amendments

F1 Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

## 102 Entry warrants.

- (1) If a justice of the peace or sheriff is satisfied by evidence on oath that—
- (a) entry to any land or premises which a person is entitled to enter in pursuance of this Part of this Act has been refused to that person or he has been prevented from doing there anything which he is entitled to do in pursuance of this Part of this Act or such refusal or prevention is apprehended or that the land or premises are unoccupied or that the occupier is temporarily absent or that the case is one of emergency; and
  - (b) there is reasonable ground for entry to the land or premises for the purposes for which entry is required
- he may grant a warrant to the person to enter the land or premises specified in the warrant if need be by force and to do whatever is to be done.
- (2) A warrant issued in pursuance of this section shall continue in force for a period of one month beginning with the day on which it was granted or until the purpose for which entry is required has been satisfied, whichever is the shorter.
- (3) A person who has been granted a warrant under this section to enter any unoccupied land or premises or land or premises the occupier of which is temporarily absent shall leave the land or premises as effectively secured against trespassers as he found it or them.

## 103 Execution of owner's works by occupier.

- (1) If, in relation to any land or premises, the owner of the land or premises fails to do anything which he is required to do by notice served under this Part of this Act, the tenant or other occupier of the land or premises may, with the consent of the local authority which served the notice, do whatever the notice requires to be done, and may, subject to subsection (2) below, deduct the expense of doing so (with interest thereon from the date on which the expense was incurred at such reasonable rate as the local authority may determine) from any rent due or to be due by the tenant or occupier to the owner in respect of the land or premises.
- (2) Nothing in subsection (1) above authorises the deduction of any expenses from any rent where the deduction would be at variance with any right or obligation arising apart from that subsection between the owner of the land or premises and the tenant or occupier thereof.

## 104 Powers of entry: occupier and owner.

If the tenant or other occupier of any land or premises prevents the owner of them from executing any work which he is required to execute in pursuance of any notice served by a local authority under this Part of this Act, the sheriff may, on the application of the owner, authorise the owner and his contractors and workmen to enter the land or premises for the purpose of executing such work.

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## **105 Contents of notices.**

Except where otherwise expressly provided under this Part of this Act, any notice issued or served by a local authority under this said Part regarding the doing of any thing in relation to land or premises shall, so far as necessary and reasonably practicable, specify—

- (a) details, including the location, of the land or premises;
- (b) the nature of any works which have to be carried out and of any requirements which have to be met; and
- (c) the period within which the notice has to be complied with.

## **106 Appeals.**

- (1) A person may, in accordance with subsection (3) below, appeal to the sheriff—
  - (a) against any requirement in any notice served on him under this Part of this Act by a local authority; or
  - (b) in respect of the amount of any expenses or interest claimed from him or the rate at which interest is charged against him under this Part of this Act.
- (2) The owner of any land or premises may, in accordance with subsection (3) below, appeal to the sheriff in respect of any expenses or interest (including the rate at which interest is charged) claimed or deducted under section 103 of this Act.
- (3) An appeal under subsection (1) or (2) above shall be made by way of summary application and shall be lodged within 14 days of—
  - (a) in the case of an appeal under paragraph (a) of subsection (1) above, the date of service of the notice; and
  - (b) in other cases, the date of service of the claim for payment or, in the case of an appeal under subsection (2) above where the expense or interest has been deducted from rent, the date of that deduction.
- (4) The sheriff may, on an appeal under this section—
  - (a) order that the requirement appealed against shall be of no effect or that it shall have effect subject to such modifications as he may specify in his order or confirm it;
  - (b) make such order as to the expenses which are or interest which is the subject of the appeal as appears to him appropriate.
- (5) Any party to an appeal under subsection (1) or (2) above may appeal on a point of law from the sheriff's decision to the Court of Session within 14 days from the date of that decision.
- (6) No appeal shall lie from the opinion of the Court of Session given in pursuance of subsection (5) above.

## **107 Time for enforcing certain notices.**

A notice containing a requirement which may be appealed against under paragraph (a) of section 106(1) of this Act shall not be acted upon by a local authority or any person authorised by a local authority to do anything until the time for appealing under that paragraph has expired or, if an appeal thereunder has been lodged, until it is disposed of or abandoned.

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## 108 Recovery of expenses incurred under section 87 by charging order.

(1) Where, under—

- (a) section 87(3) of this Act; or
- (b) section 99(4) thereof (to the extent that it relates to failure to rectify a defect specified in a notice served under section 87(1) thereof)

a local authority are entitled to recover any expenses, they may make in favour of themselves an order providing and declaring that the land, building or premises is thereby charged and burdened with an annuity to pay the amount of the expenses.

(2) Paragraphs 2 to 8 of Schedule [<sup>F2</sup>9 to the Housing (Scotland) Act 1987] shall apply to an order under subsection (1) above as they apply to a charging order under paragraph 1 of that Schedule but with the following [<sup>F3</sup>modification, that is to say, in subparagraph (b)(ii) of paragraph 4 of that Schedule] , after the word “Act”, where thirdly occurring, there shall be inserted the words “or under the <sup>M1</sup>Building (Scotland) Act 1959.”.

### Textual Amendments

**F2** Words substituted by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), ss. 335, 339(2), **Sch. 23 para. 28(2)**

**F3** Words in s. 108(2) substituted (1.4.2015) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), ss. 92(2), 104(3); S.S.I. 2015/122, art. 2

### Marginal Citations

**M1** [1959 c. 24](#).

## 109 Replacement of provisions of this Part by Health and Safety Regulations.

Subsection (1) of section 80 of the <sup>M2</sup>Health and Safety at Work etc. Act 1974 (repeal or modification of certain provisions by regulations) shall apply to any provision of this Part of this Act and to any byelaws made under any such provision as it applies to any provision mentioned in subsection (2) of that section.

### Marginal Citations

**M2** [1974 c. 37](#).

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