

Guidance on Works to Dangerous Buildings

INTERPRETATION:

The Guidance Notes produced here are for the benefit of the public to increase a general awareness of the powers available to the Council, owners and occupiers **in respect of buildings that develop conditions likely to represent a danger to persons using or frequenting buildings.**

They are **not a substitute** for the statute law as described under Section 28, 29 & 30 of the Building (Scotland) Act 2003.

They are **not intended to give a definitive policy for operations** carried out by the Building Standards Section. Each case dealt with by the Council will be treated on its individual merits within the broad parameters specified here.

SCOPE OF THE ACT:

There is a general duty on owners to maintain buildings in their ownership in such a way as will ensure that conditions likely to present a danger to persons in and around the building do not arise.

Powers are available to the Council to make sure that owners meet this general duty.

COMMON OWNERSHIP:

Where problems arise with the need for works to remove dangerous conditions to buildings in **common ownership** resulting from an unwillingness of a common owner to pay their share of the works, the Council can **require all owners with a common interest** to have the necessary work carried out to remove the danger.

HOW DOES THIS WORK?:

The Council through BUILDING STANDARDS will take action either directly, where the danger is immediate, or by requiring the owners to carry out essential repair or removal works when

- a complaint is received which points to a dangerous condition in a building, or when
- Building Standards officers, in the course of their normal duties, observe a dangerous condition.

WHAT IS A DANGEROUS CONDITION?:

In assessing the need for works to remove defects the Council will look at

- the **nature of the defect.**
- the **need for urgent action.**
- the **risk to users and occupiers** of buildings if the dangerous condition is not removed.
- the **risk to the building** containing the dangerous condition.
- the **risk to buildings adjoining the building** containing the dangerous condition.

WHO CARRIES OUT THE WORK?:

When the Council decide that action is required, the affected owners will be encouraged to instruct the necessary works to make the building(s) safe. If the owners fail to agree to this then the Council may arrange for the works to be undertaken by a contractor appointed by them.

NOTE: Where the nature of the dangerous condition is such that immediate action is required the Council may arrange for the necessary work to be undertaken immediately.

SCOPE OF WORKS:

The prime concern of the Council in action to remove danger is the protection of persons in and around the building. Possible alternative methods used to secure the protection may be:

- erection of security fencing/hoardings to prohibit access to and around the building
- physical removal or demolition of the building, in part or whole, containing the dangerous condition(s).

REMOVAL OF OCCUPANTS:

The Council have the power to insist on the immediate removal of occupants in extreme cases.

Alternatively where the removal of occupants is necessary to allow remedial works to be carried out the Council may apply to the Sheriff for a warrant for ejection.

In the event of the warrant being granted, such a decision is final. There are no rights of appeal.

POWERS OF ENTRY:

The Council have power to enter buildings for the purpose of:

- inspection to assess whether dangerous conditions exist.
- carrying out works to remove dangerous conditions.

SECURITY OF PREMISES:

In any right of entry, including by force, the Council and their representatives must leave land or premises as effectively secured as before such entry.

OFFENCES:

Any person who wilfully obstructs any authorised person acting on behalf of the Council in the course of inspecting a building to assess the nature of dangerous condition or in the execution of works required to repair, secure or demolish dangerous buildings shall be guilty of an offence.

Any such person is liable to be prosecuted and fined.

FORMAL NOTICE PROCEDURES:

In the event that immediate action is not required, the Council shall serve a notice on all affected owners requiring that essential works are completed within 28 days (or longer if specified) of receipt of the notice.

If no objection is received, or should any objection after having been heard and rejected, the Council shall then proceed to undertake the necessary works to remove the danger.

NOTE: The affected owners may object to the requirements of a notice within 21 days of that notice.

NOTE: In the event that the owner(s) fail to have the works specified in the notice carried out within the period of the notice the Council will instruct a contractor to have the works carried out on their behalf.

ANCILLARY REQUIREMENTS:

In any works involving demolition, or the erection of scaffolding or hoardings that could affect the public road, the agreement of the Roads Authority is required.

Where there is a need to close a public road to enable repair works or demolitions to be undertaken, the Roads Authority must be consulted.

WHO PAYS FOR THIS WORK?:

When the owner(s) agree to have essential repairs or removal works carried out then the costs are borne by respective owners on a basis to be agreed by them.

In the event that the Council themselves are required to undertake the works, due to default by the owners, all expenses incurred - that is the costs of the actual work plus charges for administration costs - will be recovered from the relevant owners of the building.

NOTE: The Council reserve the right to recover from the owners any administration costs incurred due to their involvement. It is obviously in the owner's interests to make their own arrangements to have the work undertaken to avoid these additional administration costs incurred because of the Council's involvement.

APPEALS:

There is a right of appeal against a notice requiring an owner to repair, secure or demolish a building suffering from dangerous conditions.

The appeal, **to a Sheriff**, must be lodged within 21 days of the date of the notice.