

Tenements (Scotland) Act 2004

2004 asp 11

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The Bill for this Act of the Scottish Parliament was passed by the Parliament on 16th September 2004 and received Royal Assent on 22nd October 2004

An Act of the Scottish Parliament to make provision about the boundaries and pertinents of properties comprised in tenements and for the regulation of the rights and duties of the owners of properties comprised in tenements; to make minor amendments of the Title Conditions (Scotland) Act 2003 (asp 9); and for connected purposes.

Boundaries and pertinents

1

Determination of boundaries and pertinents

(1) Except in so far as any different boundaries or pertinents are constituted by virtue of the title to the tenement, or any enactment, the boundaries and pertinents of sectors of a tenement shall be determined in accordance with sections 2 and 3 of this Act.

(2) In this Act, "title to the tenement" means-

(a) any conveyance, or reservation, of property which affects-

(i) the tenement; or

(ii) any sector in the tenement; and

(b) where an interest in-

(i) the tenement; or

(ii) any sector in the tenement,

has been registered in the Land Register of Scotland, the title sheet of that interest.

Tenement boundaries

(1) Subject to subsections (3) to (7) below, the boundary between any two contiguous sectors is the median of the structure that separates them; and a sector-

(a) extends in any direction to such a boundary; or

(b) if it does not first meet such a boundary-

(i) extends to and includes the solum or any structure which is an outer surface of the tenement building; or

(ii) extends to the boundary that separates the sector from a contiguous building which is not part of the tenement building.

(2) For the purposes of subsection (1) above, where the structure separating two contiguous sectors is or includes something (as for example, but without prejudice to the generality of this subsection, a door or window) which wholly or mainly serves only one of those sectors, the thing is in its entire thickness part of that sector.

(3) A top flat extends to and includes the roof over that flat.

(4) A bottom flat extends to and includes the solum under that flat.

(5) A close extends to and includes the roof over, and the solum under, the close.

(6) Where a sector includes the solum (or any part of it) the sector shall also include, subject to subsection (7) below, the airspace above the tenement building and directly over the solum (or part).

(7) Where the roof of the tenement building slopes, a sector which includes the roof (or any part of it) shall also include the airspace above the slope of the roof (or part) up to the level of the highest point of the roof.

Pertinents

(1) Subject to subsection (2) below, there shall attach to each of the flats, as a pertinent, a right of common property in (and in the whole of) the following parts of a tenement-

(a) a close;

(b) a lift by means of which access can be obtained to more than one of the flats.

(2) If a close or lift does not afford a means of access to a flat then there shall not attach to that flat, as a pertinent, a right of common property in the close or, as the case may be, lift.

(3) Any land (other than the solum of the tenement building) pertaining to a tenement shall attach as a pertinent to the bottom flat most nearly adjacent to the land (or part of the land); but this subsection shall not apply to any part which constitutes a path, outside stair or other way affording access to any sector other than that flat.

(4) If a tenement includes any part (such as, for example, a path, outside stair, fire escape, rhone, pipe, flue, conduit, cable, tank or chimney stack) that does not fall within subsection (1) or (3) above and that part-

(a) wholly serves one flat, then it shall attach as a pertinent to that flat;

(b) serves two or more flats, then there shall attach to each of the flats served, as a pertinent, a right of common property in (and in the whole of) the part.

(5) For the purposes of this section, references to rights of common property being attached to flats as pertinents are references to there attaching to each flat equal rights of common property; except that where the common property is a chimney stack the share allocated to a flat shall be determined in direct accordance with the ratio which the number of flues serving it in the stack bears to the total number of flues in the stack.

Application of the Tenement Management Scheme

(1) The Tenement Management Scheme (referred to in this section as "the Scheme"), which is set out in schedule 1 to this Act, shall apply in relation to a tenement to the extent provided by the following provisions of this section.

(2) The Scheme shall not apply in any period during which the development management scheme applies to the tenement by virtue of section 71 of the Title Conditions (Scotland) Act 2003 (asp 9).

(3) The provisions of rule 1 of the Scheme shall apply, so far as relevant, for the purpose of interpreting any other provision of the Scheme which applies to the tenement.

(4) Rule 2 of the Scheme shall apply unless-

(a) a tenement burden provides procedures for the making of decisions by the owners;
and

(b) the same such procedures apply as respects each flat.

(5) The provisions of rule 3 of the Scheme shall apply to the extent that there is no tenement burden enabling the owners to make scheme decisions on any matter on which a scheme decision may be made by them under that rule.

(6) Rule 4 of the Scheme shall apply in relation to any scheme costs incurred in relation to any part of the tenement unless a tenement burden provides that the entire liability for those scheme costs (in so far as liability for those costs is not to be met by someone other than an owner) is to be met by one or more of the owners.

(7) The provisions of rule 5 of the Scheme shall apply to the extent that there is no tenement burden making provision as to the liability of the owners in the circumstances covered by the provisions of that rule.

(8) The provisions of rule 6 of the Scheme shall apply to the extent that there is no tenement burden making provision as to the effect of any procedural irregularity in the making of a scheme decision on-

(a) the validity of the decision; or

(b) the liability of any owner affected by the decision.

(9) Rule 7 of the Scheme shall apply to the extent that there is no tenement burden making provision-

(a) for an owner to instruct or carry out any emergency work as defined in that rule; or

(b) as to the liability of the owners for the cost of any emergency work as so defined.

(10) The provisions of-

(a) rule 8; and

(b) subject to subsection (11) below, rule 9,

of the Scheme shall apply, so far as relevant, for the purpose of supplementing any other provision of the Scheme which applies to the tenement.

(11) The provisions of rule 9 are subject to any different provision in any tenement burden.

(12) The Scottish Ministers may by order substitute for the sums for the time being specified in rule 3.3 of the Scheme such other sums as appear to them to be justified by a change in the value of money appearing to them to have occurred since the last occasion on which the sums were fixed.

(13) Where some but not all of the provisions of the Scheme apply, references in the Scheme to "the scheme" shall be read as references only to those provisions of the Scheme which apply.

(14) In this section, "scheme costs" and "scheme decision" have the same meanings as they have in the Scheme.

Resolution of disputes

5

Application to sheriff for annulment of certain decisions

(1) Where a decision is made by the owners in accordance with the management scheme which applies as respects the tenement (except where that management scheme is the development management scheme), an owner mentioned in subsection (2) below may, by

summary application, apply to the sheriff for an order annulling the decision.

(2) That owner is-

(a) any owner who, at the time the decision referred to in subsection (1) above was made, was not in favour of the decision; or

(b) any new owner, that is to say, any person who was not an owner at that time but who has since become an owner.

(3) For the purposes of any such application, the defender shall be all the other owners.

(4) An application under subsection (1) above shall be made-

(a) in a case where the decision was made at a meeting attended by the owner making the application, not later than 28 days after the date of that meeting; or

(b) in any other case, not later than 28 days after the date on which notice of the making of the decision was given to the owner for the time being of the flat in question.

(5) The sheriff may, if satisfied that the decision-

(a) is not in the best interests of all (or both) the owners taken as a group; or

(b) is unfairly prejudicial to one or more of the owners,

make an order annulling the decision (in whole or in part).

(6) Where such an application is made as respects a decision to carry out maintenance, improvements or alterations, the sheriff shall, in considering whether to make an order under subsection (5) above, have regard to-

(a) the age of the property which is to be maintained, improved or, as the case may be, altered;

(b) its condition;

(c) the likely cost of any such maintenance, improvements or alterations; and

(d) the reasonableness of that cost.

(7) Where the sheriff makes an order under subsection (5) above annulling a decision (in whole or in part), the sheriff may make such other, consequential, order as the sheriff thinks fit (as, for example, an order as respects the liability of owners for any costs already incurred).

(8) A party may not later than fourteen days after the date of-

(a) an order under subsection (5) above; or

(b) an interlocutor dismissing such an application,

appeal to the Court of Session on a point of law.

(9) A decision of the Court of Session on an appeal under subsection (8) above shall be final.

(10) Where an owner is entitled to make an application under subsection (1) above in relation to any decision, no step shall be taken to implement that decision unless-

(a) the period specified in subsection (4) above within which such an application is to be made has expired without such an application having been made and notified to the owners; or

(b) where such an application has been so made and notified-

(i) the application has been disposed of and either the period specified in subsection (8) above within which an appeal against the sheriff's decision may be made has expired without such an appeal having been made or such an appeal has been made and disposed of; or

(ii) the application has been abandoned.

(11) Subsection (10) above does not apply to a decision relating to work which requires to be carried out urgently.

6

Application to sheriff for order resolving certain disputes

(1) Any owner may by summary application apply to the sheriff for an order relating to any matter concerning the operation of-

(a) the management scheme which applies as respects the tenement (except where that management scheme is the development management scheme); or

(b) any provision of this Act in its application as respects the tenement.

(2) Where an application is made under subsection (1) above the sheriff may, subject to such conditions (if any) as the sheriff thinks fit-

(a) grant the order craved; or

(b) make such other order under this section as the sheriff considers necessary or expedient.

(3) A party may not later than fourteen days after the date of-

(a) an order under subsection (2) above; or

(b) an interlocutor dismissing such an application,

appeal to the Court of Session on a point of law.

(4) A decision of the Court of Session on an appeal under subsection (3) above shall be final.

Support and shelter

7

Abolition as respects tenements of common law rules of common interest

Any rule of law relating to common interest shall, to the extent that it applies as respects a tenement, cease to have effect; but nothing in this section shall affect the operation of any such rule of law in its application to a question affecting both a tenement and-

(a) some other building or former building (whether or not a tenement); or

(b) any land not pertaining to the tenement.

8

Duty to maintain so as to provide support and shelter etc.

(1) Subject to subsection (2) below, the owner of any part of a tenement building, being a part that provides, or is intended to provide, support or shelter to any other part, shall maintain the supporting or sheltering part so as to ensure that it provides support or shelter.

(2) An owner shall not by virtue of subsection (1) above be obliged to maintain any part of a tenement building if it would not be reasonable to do so, having regard to all the

circumstances (and including, in particular, the age of the tenement building, its condition and the likely cost of any maintenance).

(3) The duty imposed by subsection (1) above on an owner of a part of a tenement building may be enforced by any other such owner who is, or would be, directly affected by any breach of the duty.

(4) Where two or more persons own any such part of a tenement building as is referred to in subsection (1) above in common, any of them may, without the need for the agreement of the others, do anything that is necessary for the purpose of complying with the duty imposed by that subsection.

9

Prohibition on interference with support or shelter etc.

(1) No owner or occupier of any part of a tenement shall be entitled to do anything in relation to that part which would, or would be reasonably likely to, impair to a material extent-

(a) the support or shelter provided to any part of the tenement building; or

(b) the natural light enjoyed by any part of the tenement building.

(2) The prohibition imposed by subsection (1) above on an owner or occupier of a part of a tenement may be enforced by any other such owner who is, or would be, directly affected by any breach of the prohibition.

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Recovery of costs incurred by virtue of section 8

Where-

(a) by virtue of section 8 of this Act an owner carries out maintenance to any part of a tenement; and

(b) the management scheme which applies as respects the tenement provides for the maintenance of that part,

the owner shall be entitled to recover from any other owner any share of the cost of the maintenance for which that other owner would have been liable had the maintenance been carried out by virtue of the management scheme in question.

Determination of when an owner's liability for certain costs arises

(1) An owner is liable for any relevant costs (other than accumulating relevant costs) arising from a scheme decision from the date when the scheme decision to incur those costs is made.

(2) For the purposes of subsection (1) above, a scheme decision is, in relation to an owner, taken to be made on-

(a) where the decision is made at a meeting, the date of the meeting; or

(b) in any other case, the date on which notice of the making of the decision is given to the owner.

(3) An owner is liable for any relevant costs arising from any emergency work from the date on which the work is instructed.

(4) An owner is liable for any relevant costs of the kind mentioned in rule 4.1(d) of the Tenement Management Scheme from the date of any statutory notice requiring the carrying out of the work to which those costs relate.

(5) An owner is liable for any accumulating relevant costs (such as the cost of an insurance premium) on a daily basis.

(6) Except where subsection (1) above applies in relation to the costs, an owner is liable for any relevant costs arising from work instructed by a manager from the date on which the work is instructed.

(7) An owner is liable in accordance with section 10 of this Act for any relevant costs arising from maintenance carried out by virtue of section 8 of this Act from the date on which the maintenance is completed.

(8) An owner is liable for any relevant costs other than those to which subsections (1) to (7) above apply from-

(a) such date; or

(b) the occurrence of such event,

as may be stipulated as the date on, or event in, which the costs become due.

(9) For the purposes of this section and section 12 of this Act, "relevant costs" means, as respects a flat-

(a) the share of any costs for which the owner is liable by virtue of the management scheme which applies as respects the tenement (except where that management scheme is the development management scheme); and

(b) any costs for which the owner is liable by virtue of this Act.

(10) In this section, "emergency work", "manager" and "scheme decision" have the same meanings as they have in the Tenement Management Scheme.

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Liability of owner and successors for certain costs

(1) Any owner who is liable for any relevant costs shall not, by virtue only of ceasing to be such an owner, cease to be liable for those costs.

(2) Subject to subsection (3) below, where a person becomes an owner (any such person being referred to in this section as a "new owner"), that person shall be severally liable with any former owner of the flat for any relevant costs for which the former owner is liable.

(3) A new owner shall be liable as mentioned in subsection (2) above for relevant costs relating to any maintenance or work (other than local authority work) carried out before the acquisition date only if-

(a) notice of the maintenance or work-

(i) in, or as near as may be in, the form set out in schedule 2 to this Act; and

(ii) containing the information required by the notes for completion set out in that schedule,

(such a notice being referred to in this section and section 13 of this Act as a "notice of potential liability for costs") was registered in relation to the new owner's flat at least 14 days before the acquisition date; and

(b) the notice had not expired before the acquisition date.

(4) In subsection (3) above-

"acquisition date" means the date on which the new owner acquired right to the flat;
and

"local authority work" means work carried out by a local authority by virtue of any enactment.

(5) Where a new owner pays any relevant costs for which a former owner of the flat is liable, the new owner may recover the amount so paid from the former owner.

(6) This section applies as respects any relevant costs for which an owner becomes liable on or after the day on which this section comes into force.

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Notice of potential liability for costs: further provision

(1) A notice of potential liability for costs-

(a) may be registered in relation to a flat only on the application of-

(i) the owner of the flat;

(ii) the owner of any other flat in the same tenement; or

(iii) any manager (within the meaning of the Tenement Management Scheme) of the tenement; and

(b) shall not be registered unless it is signed by or on behalf of the applicant.

(2) A notice of potential liability for costs may be registered-

(a) in relation to more than one flat in respect of the same maintenance or work; and

(b) in relation to any one flat, in respect of different maintenance or work.

(3) A notice of potential liability for costs expires at the end of the period of 3 years beginning with the date of its registration, unless the notice is renewed by being registered again before the end of that period.

(4) This section applies to a renewed notice of potential liability for costs as it applies to any other such notice.

(5) The Keeper of the Registers of Scotland shall not be required to investigate or determine whether the information contained in any notice of potential liability for costs

submitted for registration is accurate.

(6) The Scottish Ministers may by order amend schedule 2 to this Act.

(7) In section 12 of the Land Registration (Scotland) Act 1979 (c.33), in subsection (3) (which specifies losses for which there is no entitlement to be indemnified by the Keeper under that section), after paragraph (p) there shall be added-

"(q) the loss arises in consequence of an inaccuracy in any information contained in a notice of potential liability for costs registered in pursuance of-

(i) section 10(2A)(a) or 10A(3) of the Title Conditions (Scotland) Act 2003 (asp 9); or

(ii) section 12(3)(a) or 13(3) of the Tenements (Scotland) Act 2004 (asp 11)."

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Former owner's right to recover costs

An owner who is entitled, by virtue of the Tenement Management Scheme or any other provision of this Act, to recover any costs or a share of any costs from any other owner shall not, by virtue only of ceasing to be an owner, cease to be entitled to recover those costs or that share.

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Prescriptive period for costs to which section 12 relates

In Schedule 1 to the Prescription and Limitation (Scotland) Act 1973 (c.52) (obligations affected by prescriptive periods of five years to which section 6 of that Act applies)-

(a) after paragraph 1(aa) there shall be inserted-

"(ab) to any obligation to pay a sum of money by way of costs to which section 12 of the Tenements (Scotland) Act 2004 (asp 11) applies;"; and

(b) in paragraph 2(e), for the words "or (aa)" there shall be substituted ", (aa) or (ab)".

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Common property: disapplication of common law right of recovery

Any rule of law which enables an owner of common property to recover the cost of necessary maintenance from the other owners of the property shall not apply in relation to any common property in a tenement where the maintenance of that property is provided for in the management scheme which applies as respects the tenement.

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Access for maintenance and other purposes

(1) Where an owner gives reasonable notice to the owner or occupier of any other part of the tenement that access is required to, or through, that part for any of the purposes mentioned in subsection (3) below, the person given notice shall, subject to subsection (5) below, allow access for that purpose.

(2) Without prejudice to subsection (1) above, where the development management scheme applies, notice under that subsection may be given by any owners' association established by the scheme to the owner or occupier of any part of the tenement.

(3) The purposes are-

(a) carrying out maintenance or other work by virtue of the management scheme which applies as respects the tenement;

(b) carrying out maintenance to any part of the tenement owned (whether solely or in common) by the person requiring access;

(c) carrying out an inspection to determine whether it is necessary to carry out maintenance;

(d) determining whether the owner of the part is fulfilling the duty imposed by section 8(1) of this Act;

(e) determining whether the owner or occupier of the part is complying with the prohibition imposed by section 9(1) of this Act;

(f) doing anything which the owner giving notice is entitled to do by virtue of section 19(1) of this Act;

(g) where floor area is relevant for the purposes of determining any liability of owners, measuring floor area; and

(h) where a power of sale order has been granted in relation to the tenement building or its site, doing anything necessary for the purpose of or in connection with any sale in pursuance of the order (other than complying with paragraph 4(3) of schedule 3 to this Act).

(4) Reasonable notice need not be given as mentioned in subsection (1) above where access is required for the purpose specified in subsection (3)(a) above and the maintenance or other work requires to be carried out urgently.

(5) An owner or occupier may refuse to allow-

(a) access under subsection (1) above; or

(b) such access at a particular time,

if, having regard to all the circumstances (and, in particular, whether the requirement for access is reasonable), it is reasonable to refuse access.

(6) Where access is allowed under subsection (1) above for any purpose, such right of access may be exercised by-

(a) the owner who or owners' association which gave notice that access was required; or

(b) such person as the owner or, as the case may be, owners' association may authorise for the purpose (any such person being referred to in this section as an "authorised person").

(7) Where an authorised person acting in accordance with subsection (6) above is liable by virtue of any enactment or rule of law for damage caused to any part of a tenement, the owner who or owners' association which authorised that person shall be severally liable with the authorised person for the cost of remedying the damage; but an owner or, as the case may be, owners' association making any payment as respects that cost shall have a right of relief against the authorised person.

(8) Where access is allowed under subsection (1) above for any purpose, the owner who or owners' association which gave notice that access was required (referred to as the "accessing owner or association") shall, so far as reasonably practicable, ensure that the part of the tenement to or through which access is allowed is left substantially in no worse a condition than that which it was in when access was taken.

(9) If the accessing owner or association fails to comply with the duty in subsection (8) above, the owner of the part to or through which access is allowed may-

(a) carry out, or arrange for the carrying out of, such work as is reasonably necessary to restore the part so that it is substantially in no worse a condition than that which it was in when access was taken; and

(b) recover from the accessing owner or association any expenses reasonably incurred in doing so.

Insurance

18

Obligation of owner to insure

(1) It shall be the duty of each owner to effect and keep in force a contract of insurance against the prescribed risks for the reinstatement value of that owner's flat and any part of the tenement building attaching to that flat as a pertinent.

(2) The duty imposed by subsection (1) above may be satisfied, in whole or in part, by way of a common policy of insurance arranged for the entire tenement building.

(3) The Scottish Ministers may by order prescribe risks against which an owner shall require to insure (in this section referred to as the "prescribed risks").

(4) Where, whether because of the location of the tenement or otherwise, an owner-

(a) having made reasonable efforts to do so, is unable to obtain insurance against a particular prescribed risk; or

(b) would be able to obtain such insurance but only at a cost which is unreasonably high,

the duty imposed by subsection (1) above shall not require an owner to insure against that particular risk.

(5) Any owner may by notice in writing request the owner of any other flat in the tenement to produce evidence of-

(a) the policy in respect of any contract of insurance which the owner of that other flat is required to have or to effect; and

(b) payment of the premium for any such policy,

and not later than 14 days after that notice is given the recipient shall produce to the owner giving the notice the evidence requested.

(6) The duty imposed by subsection (1) above on an owner may be enforced by any other owner.

Installation of service pipes etc.

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Installation of service pipes etc.

(1) Subject to subsections (2) and (3) below and to section 17 of this Act, an owner shall be entitled-

- (a) to lead through any part of the tenement such pipe, cable or other equipment; and
- (b) to fix to any part of the tenement, and keep there, such equipment,

as is necessary for the provision to that owner's flat of such service or services as the Scottish Ministers may by regulations prescribe.

(2) The right conferred by subsection (1) above is exercisable only in accordance with such procedure as the Scottish Ministers may by regulations prescribe; and different procedures may be so prescribed in relation to different services.

(3) An owner is not entitled by virtue of subsection (1) above to lead anything through or fix anything to any part which is wholly within another owner's flat.

(4) This section is without prejudice to any obligation imposed by virtue of any enactment relating to-

- (a) planning;
- (b) building; or
- (c) any service prescribed under subsection (1) above.

Demolition of tenement building not to affect ownership

(1) The demolition of a tenement building shall not alone effect any change as respects any right of ownership.

(2) In particular, the fact that, as a consequence of demolition of a tenement building, any land pertaining to the building no longer serves, or affords access to, any flat or other sector shall not alone effect any change of ownership of the land as a pertinent.

Cost of demolishing tenement building

(1) Except where a tenement burden otherwise provides, the cost of demolishing a tenement building shall, subject to subsection (2) below, be shared equally among all (or both) the flats in the tenement, and each owner is liable accordingly.

(2) Where the floor area of the largest (or larger) flat in the tenement is more than one and a half times that of the smallest (or smaller) flat the owner of each flat shall be liable to contribute towards the cost of demolition of the tenement building in the proportion which the floor area of that owner's flat bears to the total floor area of all (or both) the flats.

(3) An owner is liable under this section for the cost of demolishing a tenement building-

(a) in the case where the owner agrees to the proposal that the tenement building be demolished, from the date of the agreement; or

(b) in any other case, from the date on which the carrying out of the demolition is instructed.

(4) This section applies as respects the demolition of part of a tenement building as it applies as respects the demolition of an entire tenement building but with any reference to a flat in the tenement being construed as a reference to a flat in the part.

(5) In this section references to flats in a tenement include references to flats which were comprehended by the tenement before its demolition.

(6) This section is subject to section 123 of the Housing (Scotland) Act 1987 (c.26) (which makes provision as respects demolition of buildings in pursuance of local authority

demolition orders and recovery of expenses by local authorities etc.).

22

Use and disposal of site where tenement building demolished

(1) This section applies where a tenement building is demolished and after the demolition two or more flats which were comprehended by the tenement building before its demolition (any such flat being referred to in this section as a "former flat") are owned by different persons.

(2) Except in so far as-

(a) the owners of all (or both) the former flats otherwise agree; or

(b) those owners are subject to a requirement (whether imposed by a tenement burden or otherwise) to erect a building on the site or to rebuild the tenement,

no owner may build on, or otherwise develop, the site.

(3) Except where the owners have agreed, or are required, to build on or develop the site as mentioned in paragraphs (a) and (b) of subsection (2) above, any owner of a former flat shall be entitled to apply for power to sell the entire site in accordance with schedule 3.

(4) Except where a tenement burden otherwise provides, the net proceeds of any sale in pursuance of subsection (3) above shall, subject to subsection (5) below, be shared equally among all (or both) the former flats and the owner of each former flat shall be entitled to the share allocated to that flat.

(5) Where-

(a) evidence of the floor area of each of the former flats is readily available; and

(b) the floor area of the largest (or larger) former flat was more than one and a half times that of the smallest (or smaller) former flat,

the net proceeds of any sale shall be shared among (or between) the flats in the proportion which the floor area of each flat bore to the total floor area of all (or both) the flats and the owner of each former flat shall be entitled to the share allocated to that flat.

(6) The prohibition imposed by subsection (2) above on an owner of a former flat may be enforced by any other such owner.

(7) In subsections (4) and (5) above, "net proceeds of any sale" means the proceeds of the sale less any expenses properly incurred in connection with the sale.

(8) In this section references to the site are references to the solum of the tenement building that occupied the site together with the airspace that is directly above the solum and any land pertaining, as a means of access, to the tenement building immediately before its demolition.

23

Sale of abandoned tenement building

(1) Where-

(a) because of its poor condition a tenement building has been entirely unoccupied by any owner or person authorised by an owner for a period of more than six months; and

(b) it is unlikely that any such owner or other person will occupy any part of the tenement building,

any owner shall be entitled to apply for power to sell the tenement building in accordance with schedule 3.

(2) Subsections (4) and (5) of section 22 of this Act shall apply as respects a sale in pursuance of subsection (1) above as those subsections apply as respects a sale in pursuance of subsection (3) of that section.

(3) In this section any reference to a tenement building includes a reference to its solum and any land pertaining, as a means of access, to the tenement building.

Liability for certain costs

24

Liability to non owner for certain damage costs

(1) Where-

(a) any part of a tenement is damaged as the result of the fault of any person (that person being in this subsection referred to as "A"); and

(b) the management scheme which applies as respects the tenement makes provision for the maintenance of that part,

any owner of a flat in the tenement (that owner being in this subsection referred to as "B") who is required by virtue of that provision to contribute to any extent to the cost of maintenance of the damaged part but who at the time when the damage was done was not an owner of the part shall be treated, for the purpose of determining whether A is liable to B as respects the cost of maintenance arising from the damage, as having been such an owner at that time.

(2) In this section "fault" means any wrongful act, breach of statutory duty or negligent act or omission which gives rise to liability in damages.

Miscellaneous and general

25

Amendments of Title Conditions (Scotland) Act 2003

The Title Conditions (Scotland) Act 2003 (asp 9) shall be amended in accordance with schedule 4.

26

Meaning of "tenement"

(1) In this Act, "tenement" means a building or a part of a building which comprises two related flats which, or more than two such flats at least two of which-

(a) are, or are designed to be, in separate ownership; and

(b) are divided from each other horizontally,

and, except where the context otherwise requires, includes the solum and any other land pertaining to that building or, as the case may be, part of the building; and the expression "tenement building" shall be construed accordingly.

(2) In determining whether flats comprised in a building or part of a building are related for the purposes of subsection (1), regard shall be had, among other things, to-

(a) the title to the tenement; and

(b) any tenement burdens,

treating the building or part for that purpose as if it were a tenement.

27

Meaning of "management scheme"

References in this Act to the management scheme which applies as respects any tenement are references to-

- (a) if the Tenement Management Scheme applies in its entirety as respects the tenement, that Scheme;
- (b) if the development management scheme applies as respects the tenement, that scheme; or
- (c) in any other case, any tenement burdens relating to maintenance, management or improvement of the tenement together with any provisions of the Tenement Management Scheme which apply as respects the tenement.

28

Meaning of "owner", determination of liability etc.

(1) In this Act, references to "owner" without further qualification are, in relation to any tenement, references to the owner of a flat in the tenement.

(2) Subject to subsection (3) below, in this Act "owner" means, in relation to a flat in a tenement, a person who has right to the flat whether or not that person has completed title; but if, in relation to the flat (or, if the flat is held *pro indiviso*, any *pro indiviso* share in it) more than one person comes within that description of owner, then "owner" means such person as has most recently acquired such right.

(3) Where a heritable security has been granted over a flat and the heritable creditor has entered into lawful possession, "owner" means the heritable creditor in possession of the flat.

(4) Subject to subsection (5) below, if two or more persons own a flat in common, any reference in this Act to an owner is a reference to both or, as the case may be, all of them.

(5) Any reference to an owner in sections 5(1) and (2), 6(1), 8(3), 9, 10, 12 to 14, 17(1), (6) and (7), 18(5) and (6), 19, 22, 23 and 24 of, and schedule 3 to, this Act shall be construed as a reference to any person who owns a flat either solely or in common with another.

(6) Subsections (2) to (5) above apply to references in this Act to the owner of a part of a tenement as they apply to references to the owner of a flat, but as if references in them to a flat were to the part of the tenement.

(7) Where two or more persons own a flat in common-

(a) they are severally liable for the performance of any obligation imposed by virtue of this Act on the owner of that flat; and

(b) as between (or among) themselves they are liable in the proportions in which they own the flat.

29

Interpretation

(1) In this Act, unless the content otherwise requires-

"chimney stack" does not include flue or chimney pot;

"close" means a connected passage, stairs and landings within a tenement building which together constitute a common access to two or more of the flats;

"demolition" includes destruction and cognate expressions shall be construed accordingly; and demolition may occur on one occasion or over any period of time;

"the development management scheme" has the meaning given by section 71(3) of the Title Conditions (Scotland) Act 2003 (asp 9);

"door" includes its frame;

"flat" includes any premises whether or not-

(a) used or intended to be used for residential purposes; or

(b) on the one floor;

"lift" includes its shaft and operating machinery;

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);

"owner" shall be construed in accordance with section 28 of this Act;

"power of sale order" means an order granted under paragraph 1 of schedule 3 to this Act;

"register", in relation to a notice of potential liability for costs or power of sale order, means register the information contained in the notice or order in the Land Register of Scotland or, as appropriate, record the notice or order in the Register of Sasines, and "registered" and other related expressions shall be construed accordingly;

"sector" means-

(a) a flat;

(b) any close or lift; or

(c) any other three dimensional space not comprehended by a flat, close or lift,

and the tenement building shall be taken to be entirely divided into sectors;

"solum" means the ground on which a building is erected;

"tenement" shall be construed in accordance with section 26 of this Act;

"tenement burden" means, in relation to a tenement, any real burden (within the meaning of the Title Conditions (Scotland) Act 2003 (asp 9)) which affects-

(a) the tenement; or

(b) any sector in the tenement;

"Tenement Management Scheme" means the scheme set out in schedule 1 to this Act;

"title to the tenement" shall be construed in accordance with section 1(2) of this Act;
and

"window" includes its frame.

(2) The floor area of a flat is calculated for the purposes of this Act by measuring the total floor area (including the area occupied by any internal wall or other internal dividing structure) within its boundaries; but no account shall be taken of any pertinents or any of the following parts of a flat-

(a) a balcony; and

(b) except where it is used for any purpose other than storage, a loft or basement.

30

Giving of notice to owners

(1) Any notice which is to be given to an owner under or in connection with this Act (other than under or in connection with the Tenement Management Scheme) may be given in writing by sending the notice to-

(a) the owner; or

(b) the owner's agent.

(2) The reference in subsection (1) above to sending a notice is to its being-

(a) posted;

(b) delivered; or

(c) transmitted by electronic means.

(3) Where an owner cannot by reasonable inquiry be identified or found, a notice shall be taken for the purposes of subsection (1)(a) above to be sent to the owner if it is posted or delivered to the owner's flat addressed to "The Owner" or using some similar expression such as "The Proprietor".

(4) For the purposes of this Act-

(a) a notice posted shall be taken to be given on the day of posting; and

(b) a notice transmitted by electronic means shall be taken to be given on the day of transmission.

31

Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act.

(2) An order under this section may modify any enactment (including this Act), instrument or document.

32

Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act shall be exercisable by statutory instrument.

(2) A statutory instrument containing an order or regulations under this Act (except an order under section 34(2) or, where subsection (3) applies, section 31) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) Where an order under section 31 contains provisions which add to, replace or omit any part of the text of an Act, the order shall not be made unless a draft of the statutory instrument

containing the order has been laid before, and approved by a resolution of, the Parliament.

33

Crown application

This Act, except section 18, binds the Crown.

34

Short title and commencement

(1) This Act may be cited as the Tenements (Scotland) Act 2004.

(2) This Act (other than this section, section 25 and schedule 4) shall come into force on such day as the Scottish Ministers may by order appoint; and different days may be appointed for different purposes.

(3) Section 25 and schedule 4 shall come into force on the day after Royal Assent.

SCHEDULE 1

(introduced by section 4)

TENEMENT MANAGEMENT SCHEME

RULE 1 - SCOPE AND INTERPRETATION

1.1

Scope of scheme

This scheme provides for the management and maintenance of the scheme property of a tenement.

1.2

Meaning of "scheme property"

For the purposes of this scheme, "scheme property" means, in relation to a tenement, all or any of the following-

- (a) any part of the tenement that is the common property of two or more of the owners,
- (b) any part of the tenement (not being common property of the type mentioned in paragraph (a) above) the maintenance of which, or the cost of maintaining which, is, by virtue of a tenement burden, the responsibility of two or more of the owners,
- (c) with the exceptions mentioned in rule 1.3, the following parts of the tenement building (so far as not scheme property by virtue of paragraph (a) or (b) above)-
 - (i) the ground on which it is built,
 - (ii) its foundations,

(iii) its external walls,
(iv) its roof (including any rafter or other structure supporting the roof),
(v) if it is separated from another building by a gable wall, the part of the gable wall that is part of the tenement building, and
(vi) any wall (not being one falling within the preceding subparagraphs), beam or column that is load bearing.

1.3 Parts not included in rule 1.2(c)

The following parts of a tenement building are the exceptions referred to in rule 1.2(c)-

- (a) any extension which forms part of only one flat,
- (b) any-
 - (i) door,
 - (ii) window,
 - (iii) skylight,
 - (iv) vent, or
 - (v) other opening,which serves only one flat,
- (c) any chimney stack or chimney flue.

1.4 Meaning of "scheme decision"

A decision is a "scheme decision" for the purposes of this scheme if it is made in accordance with-

- (a) rule 2, or
- (b) where that rule does not apply, the tenement burden or burdens providing the procedure for the making of decisions by the owners.

1.5 Other definitions

In this scheme-

"maintenance" includes repairs and replacement, cleaning, painting and other routine works, gardening, the day to day running of a tenement and the reinstatement of a part (but not most) of the tenement building, but does not include demolition, alteration or improvement unless reasonably incidental to the maintenance,

"manager" means, in relation to a tenement, a person appointed (whether or not by virtue of rule 3.1(c)(i)) to manage the tenement, and

"scheme costs" has the meaning given by rule 4.1.

1.6 Rights of co owners

If a flat is owned by two or more persons, then one of them may do anything that the owner is by virtue of this scheme entitled to do.

RULE 2 - PROCEDURE FOR MAKING SCHEME DECISIONS

2.1

Making scheme decisions

Any decision to be made by the owners shall be made in accordance with the following provisions of this rule.

2.2

Allocation and exercise of votes

Except as mentioned in rule 2.3, for the purpose of voting on any proposed scheme decision one vote is allocated as respects each flat, and any right to vote is exercisable by the owner of that flat or by someone nominated by the owner to vote as respects the flat.

2.3

Qualification on allocation of votes

No vote is allocated as respects a flat if-

- (a) the scheme decision relates to the maintenance of scheme property, and
- (b) the owner of that flat is not liable for maintenance of, or the cost of maintaining, the property concerned.

2.4

Exercise of vote where two or more persons own flat

If a flat is owned by two or more persons the vote allocated as respects that flat may be exercised in relation to any proposal by either (or any) of them, but if those persons disagree as to how the vote should be cast then the vote is not to be counted unless-

- (a) where one of those persons owns more than a half share of the flat, the vote is exercised by that person, or
- (b) in any other case, the vote is the agreed vote of those who together own more than a half share of the flat.

2.5

Decision by majority

A scheme decision is made by majority vote of all the votes allocated.

2.6

Notice of meeting

If any owner wishes to call a meeting of the owners with a view to making a scheme decision at that meeting that owner must give the other owners at least 48 hours' notice of the date and time of the meeting, its purpose and the place where it is to be held.

2.7

Consultation of owners if scheme decision not made at meeting

If an owner wishes to propose that a scheme decision be made but does not wish to call a meeting for the purpose that owner must instead-

(a) unless it is impracticable to do so (whether because of absence of any owner or for other good reason) consult on the proposal each of the other owners of flats as respects which votes are allocated, and

(b) count the votes cast by them.

2.8 Consultation where two or more persons own flat

For the purposes of rule 2.7, the requirement to consult each owner is satisfied as respects any flat which is owned by more than one person if one of those persons is consulted.

2.9 Notification of scheme decisions

A scheme decision must, as soon as practicable, be notified-

(a) if it was made at a meeting, to all the owners who were not present when the decision was made, by such person as may be nominated for the purpose by the persons who made the decision, or

(b) in any other case, to each of the other owners, by the owner who proposed that the decision be made.

2.10 Case where decision may be annulled by notice

Any owner (or owners) who did not vote in favour of a scheme decision to carry out, or authorise, maintenance to scheme property and who would be liable for not less than 75 per cent. of the scheme costs arising from that decision may, within the time mentioned in rule 2.11, annul that decision by giving notice that the decision is annulled to each of the other owners.

2.11 Time limits for rule 2.10

The time within which a notice under rule 2.10 must be given is-

(a) if the scheme decision was made at a meeting attended by the owner (or any of the owners), not later than 21 days after the date of that meeting, or

(b) in any other case, not later than 21 days after the date on which notification of the making of the decision was given to the owner or owners (that date being, where notification was given to owners on different dates, the date on which it was given to the last of them).

RULE 3 - MATTERS ON WHICH SCHEME DECISIONS MAY BE MADE

3.1

Basic scheme decisions

The owners may make a scheme decision on any of the following matters-

(a) to carry out maintenance to scheme property,

(b) to arrange for an inspection of scheme property to determine whether or to what extent it is necessary to carry out maintenance to the property,

(c) except where a power conferred by a manager burden (within the meaning of the Title Conditions (Scotland) Act 2003 (asp 9)) is exercisable in relation to the tenement-

(i) to appoint on such terms as they may determine a person (who may be an owner or a firm) to manage the tenement,

(ii) to dismiss any manager,

(d) to delegate to a manager power to exercise such of their powers as they may specify, including, without prejudice to that generality, any power to decide to carry out maintenance and to instruct it,

(e) to arrange for the tenement a common policy of insurance complying with section 18 of this Act and against such other risks (if any) as the owners may determine and to determine on an equitable basis the liability of each owner to contribute to the premium,

(f) to install a system enabling entry to the tenement to be controlled from each flat,

(g) to determine that an owner is not required to pay a share (or some part of a share) of such scheme costs as may be specified by them,

(h) to authorise any maintenance of scheme property already carried out,

(i) to modify or revoke any scheme decision.

3.2

Scheme decisions relating to maintenance

If the owners make a scheme decision to carry out maintenance to scheme property or if a manager decides, by virtue of a scheme decision, that maintenance needs to be carried out to scheme property, the owners may make a scheme decision on any of the following matters-

(a) to appoint on such terms as they may determine a person (who may be an owner or a firm) to manage the carrying out of the maintenance,

(b) to instruct or arrange for the carrying out of the maintenance,

(c) subject to rule 3.3, to require each owner to deposit-

(i) by such date as they may decide (being a date not less than 28 days after the requirement is made of that owner), and

(ii) with such person as they may nominate for the purpose, a sum of money (being a sum not exceeding that owner's apportioned share of a reasonable estimate of the cost of the maintenance),

(d) to take such other steps as are necessary to ensure that the maintenance is carried out to a satisfactory standard and completed in good time.

3.3

Scheme decisions under rule 3.2(c) requiring deposits exceeding certain amounts

A requirement, in pursuance of a scheme decision under rule 3.2(c), that each owner deposit a sum of money-

(a) exceeding £100, or

(b) of £100 or less where the aggregate of that sum taken together with any other sum or sums required (otherwise than by a previous notice under this rule) in

the preceding 12 months to be deposited by each owner by virtue any scheme decision under rule 3.2(c) exceeds £200,

shall be made by written notice to each owner and shall require the sum to be deposited into such account (the "maintenance account") as the owners may nominate for the purpose.

3.4 Provision supplementary to rule 3.3

Where a requirement is, or is to be, made in accordance with rule 3.3-

(a) the owners may make a scheme decision authorising a manager or at least two other persons (whether or not owners) to operate the maintenance account on behalf of the owners,

(b) there must be contained in or attached to the notice to be given under rule 3.3 a note comprising a summary of the nature and extent of the maintenance to be carried out together with the following information-

(i) the estimated cost of carrying out that maintenance,
(ii) why the estimate is considered a reasonable estimate,
(iii) how the sum required from the owner in question and the apportionment among the owners have been arrived at,
(iv) what the apportioned shares of the other owners are,
(v) the date on which the decision to carry out the maintenance was made and the names of those by whom it was made,
(vi) a timetable for the carrying out of the maintenance, including the dates by which it is proposed the maintenance will be commenced and completed,
(vii) the location and number of the maintenance account, and
(viii) the names and addresses of the persons who will be authorised to operate that account on behalf of the owners,

(c) the maintenance account to be nominated under rule 3.3 must be a bank or building society account which is interest bearing, and the authority of at least two persons or of a manager on whom has been conferred the right to give authority, must be required for any payment from it,

(d) if a modification or revocation under rule 3.1(i) affects the information contained in the notice or the note referred to in paragraph (b) above, the information must be sent again, modified accordingly, to the owners,

(e) an owner is entitled to inspect, at any reasonable time, any tender received in connection with the maintenance to be carried out,

(f) the notice to be given under rule 3.3 may specify a date as a refund date for the purposes of paragraph (g)(i) below,

(g) if-

(i) the maintenance is not commenced by-

(A) where the notice under rule 3.3 specifies a refund date, that date, or

(B) where that notice does not specify such a date, the twenty-eighth day after the proposed date for its commencement as specified in the notice by virtue of paragraph (b)(vi) above, and

(ii) a depositor demands, by written notice, from the persons authorised under paragraph (a) above repayment (with accrued interest) of such sum as has been deposited by that person in compliance with the scheme decision under rule 3.2(c),

the depositor is entitled to be repaid accordingly, except that no requirement to make repayment in compliance with a notice under sub-paragraph (ii) arises if the persons so authorised do not receive that notice before the maintenance is commenced,

(h) such sums as are held in the maintenance account by virtue of rule 3.3 are held in trust for all the depositors, for the purpose of being used by the persons authorised to make payments from the account as payment for the maintenance,

(i) any sums held in the maintenance account after all sums payable in respect of the maintenance carried out have been paid shall be shared among the depositors-

(i) by repaying each depositor, with any accrued interest and after deduction of that person's apportioned share of the actual cost of the maintenance, the sum which the person deposited, or

(ii) in such other way as the depositors agree in writing.

3.5 Scheme decisions under rule 3.1(g): votes of persons standing to benefit not to be counted

A vote in favour of a scheme decision under rule 3.1(g) is not to be counted if-

(a) the owner exercising the vote, or

(b) where the vote is exercised by a person nominated by an owner-

(i) that person, or

(ii) the owner who nominated that person,

is the owner or an owner who, by virtue of the decision, would not be required to pay as mentioned in that rule.

RULE 4 - SCHEME COSTS: LIABILITY AND APPORTIONMENT

4.1

Meaning of "scheme costs"

Except in so far as rule 5 applies, this rule provides for the apportionment of liability among the owners for any of the following costs-

(a) any costs arising from any maintenance or inspection of scheme property where the maintenance or inspection is in pursuance of, or authorised by, a scheme decision,

(b) any remuneration payable to a person appointed to manage the carrying out of such maintenance as is mentioned in paragraph (a),

(c) running costs relating to any scheme property (other than costs incurred solely for the benefit of one flat),

(d) any costs recoverable by a local authority in respect of work relating to any scheme property carried out by them by virtue of any enactment,

(e) any remuneration payable to any manager,

(f) the cost of any common insurance to cover the tenement,

(g) the cost of installing a system enabling entry to the tenement to be controlled from each flat,

(h) any costs relating to the calculation of the floor area of any flat, where such calculation is necessary for the purpose of determining the share of any other costs for which each owner is liable,

(i) any other costs relating to the management of scheme property, and a reference in this scheme to "scheme costs" is a reference to any of the costs mentioned in paragraphs (a) to (i).

4.2 Maintenance and running costs

Except as provided in rule 4.3, if any scheme costs mentioned in rule 4.1(a) to (d) relate to-

(a) the scheme property mentioned in rule 1.2(a), then those costs are shared among the owners in the proportions in which the owners share ownership of that property,

(b) the scheme property mentioned in rule 1.2(b) or (c), then-

(i) in any case where the floor area of the largest (or larger) flat is more than one and a half times that of the smallest (or smaller) flat, each owner is liable to contribute towards those costs in the proportion which the floor area of that owner's flat bears to the total floor area of all (or both) the flats,

(ii) in any other case, those costs are shared equally among the flats,

and each owner is liable accordingly.

4.3 Scheme costs relating to roof over the close

Where-

(a) any scheme costs mentioned in rule 4.1(a) to (d) relate to the roof over the close, and

(b) that roof is common property by virtue of section 3(1)(a) of this Act,

then, despite the fact that the roof is scheme property mentioned in rule 1.2(a), paragraph (b) of rule 4.2 shall apply for the purpose of apportioning liability for those costs.

4.4 Insurance premium

Any scheme costs mentioned in rule 4.1(f) are shared among the flats-

(a) where the costs relate to common insurance arranged by virtue of rule 3.1(e), in such proportions as may be determined by the owners by virtue of that rule, or

(b) where the costs relate to common insurance arranged by virtue of a tenement burden, equally,
and each owner is liable accordingly.

4.5 Other scheme costs

Any scheme costs mentioned in rule 4.1(e), (g), (h) or (i) are shared equally among the flats, and each owner is liable accordingly.

RULE 5 - REDISTRIBUTION OF SHARE OF COSTS

Where an owner is liable for a share of any scheme costs but-

(a) a scheme decision has been made determining that the share (or a portion of it) should not be paid by that owner, or

that-
(b) the share cannot be recovered for some other reason such as

(i) the estate of that owner has been sequestrated, or

(ii) that owner cannot, by reasonable inquiry, be identified or found,

then that share must be paid by the other owners who are liable for a share of the same costs (the share being divided equally among the flats of those other owners), but where paragraph (b) applies that owner is liable to each of those other owners for the amount paid by each of them.

RULE 6 - PROCEDURAL IRREGULARITIES

6.1

Validity of scheme decisions

Any procedural irregularity in the making of a scheme decision does not affect the validity of the decision.

6.2

Liability for scheme costs where procedural irregularity

If any owner is directly affected by a procedural irregularity in the making of a scheme decision and that owner-

(a) was not aware that any scheme costs relating to that decision were being incurred, or

(b) on becoming aware as mentioned in paragraph (a), immediately objected to the incurring of those costs,

that owner is not liable for any such costs (whether incurred before or after the date of objection), and, for the purposes of determining the share of those scheme costs due by each of the other owners, that owner is left out of account.

RULE 7 - EMERGENCY WORK

7.1

Power to instruct or carry out

Any owner may instruct or carry out emergency work.

7.2

Liability for cost

The owners are liable for the cost of any emergency work instructed or carried out as if the cost of that work were scheme costs mentioned in rule 4.1(a).

7.3 Meaning of "emergency work"

For the purposes of this rule, "emergency work" means work which, before a scheme decision can be obtained, requires to be carried out to scheme property-

- (a) to prevent damage to any part of the tenement, or
- (b) in the interests of health or safety.

RULE 8 - ENFORCEMENT

8.1 Scheme binding on owners

This scheme binds the owners.

8.2 Scheme decision to be binding

A scheme decision is binding on the owners and their successors as owners.

8.3 Enforceability of scheme decisions

Any obligation imposed by this scheme or arising from a scheme decision may be enforced by any owner.

8.4 Enforcement by third party

Any person authorised in writing for the purpose by the owner or owners concerned may-

- (a) enforce an obligation such as is mentioned in rule 8.3 on behalf of one or more owners, and
- (b) in doing so, may bring any claim or action in that person's own name.

RULE 9 - GIVING OF NOTICE

9.1 Giving of notice

Any notice which requires to be given to an owner under or in connection with this scheme may be given in writing by sending the notice to-

- (a) the owner, or
- (b) the owner's agent.

9.2 Methods of "sending" for the purposes of rule 9.1

The reference in rule 9.1 to sending a notice is to its being-

- (a) posted,
- (b) delivered, or
- (c) transmitted by electronic means.

9.3 Giving of notice to owner where owner's name is not known

Where an owner cannot by reasonable inquiry be identified or found, a notice shall be taken for the purposes of rule 9.1(a) to be sent to the owner if it is posted or delivered to the owner's flat addressed to "The Owner" or using some other similar expression such as "The Proprietor".

9.4 Day on which notice is to be taken to be given

For the purposes of this scheme-

- (a) a notice posted shall be taken to be given on the day of posting,
- and
- (b) a notice transmitted by electronic means shall be taken to be given on the day of transmission.

SCHEDULE 2

*(introduced by
section 12(3))*

FORM OF NOTICE OF POTENTIAL LIABILITY FOR COSTS

"NOTICE OF POTENTIAL LIABILITY FOR COSTS

This notice gives details of certain maintenance or work carried out in relation to the flat specified in the notice. The effect of the notice is that a person may, on becoming the owner of the flat, be liable by virtue of section 12(3) of the Tenements (Scotland) Act 2004 (asp 11) for any outstanding costs relating to the maintenance or work.

Flat to which notice relates:

(see note 1 below)

Description of the maintenance or work to which notice relates:

(see note 2 below)

Person giving notice:

(see note 3 below)

Signature:

(see note 4 below)

Date of signing:"

Notes for completion

(These notes are not part of the notice)

- 1 Describe the flat in a way that is sufficient to identify it. Where the flat has a postal address, the description must include that address. Where title to the flat has been registered in the Land Register of Scotland, the description must refer to the title number of the flat or of the larger subjects of which it forms part. Otherwise, the description should normally refer to and identify a deed recorded in a specified division of the Register of Sasines.
- 2 Describe the maintenance or work in general terms.
- 3 Give the name and address of the person applying for registration of the notice ("the applicant") or the applicant's name and the name and address of the applicant's agent.
- 4 The notice must be signed by or on behalf of the applicant.

SCHEDULE 3

*(introduced by sections
22(3) and 23(1))*

SALE UNDER SECTION 22(3) OR 23(1)
Application to sheriff for power to sell

- 1 (1) Where an owner is entitled to apply-
 - (a) under section 22(3), for power to sell the site; or
 - (b) under section 23(1), for power to sell the tenement building,the owner may make a summary application to the sheriff seeking an order (referred to in this Act as a "power of sale order") conferring such power on the owner.
 - (2) The site or tenement building in relation to which an application or order is made under sub-paragraph (1) is referred to in this schedule as the "sale subjects".
 - (3) An owner making an application under sub-paragraph (1) shall give notice of it to each of the other owners of the sale subjects.
 - (4) The sheriff shall, on an application under sub-paragraph (1)-
 - (a) grant the power of sale order sought unless satisfied that to do so would-
 - (i) not be in the best interests of all (or both) the owners taken as a group; or
 - (ii) be unfairly prejudicial to one or more of the owners; and
 - (b) if a power of sale order has previously been granted in respect of the same sale subjects, revoke that previous order.
 - (5) A power of sale order shall contain-
 - (a) the name and address of the owner in whose favour it is granted;

(b) the postal address of each flat or, as the case may be, former flat comprised in the sale subjects to which the order relates; and

(c) a sufficient conveyancing description of each of those flats or former flats.

(6) A description of a flat or former flat is a sufficient conveyancing description for the purposes of sub-paragraph (5)(c) if-

(a) where the interest of the proprietor of the land comprising the flat or former flat has been registered in the Land Register of Scotland, the description refers to the number of the title sheet of that interest; or

(b) in relation to any other flat or former flat, the description is by reference to a deed recorded in the Register of Sasines.

(7) An application under sub-paragraph (1) shall state the applicant's conclusions as to-

(a) which of subsections (4) and (5) of section 22 applies for the purpose of determining how the net proceeds of any sale of the sale subjects in pursuance of a power of sale order are to be shared among the owners of those subjects; and

(b) if subsection (5) of that section is stated as applying for that purpose-

(i) the floor area of each of the flats or former flats comprised in the sale subjects; and

(ii) the proportion of the net proceeds of sale allocated to that flat.
Appeal against grant or refusal of power of sale order

2

(1) A party may, not later than 14 days after the date of-

(a) making of a power of sale order; or

(b) an interlocutor refusing an application for such an order, appeal to the Court of Session on a point of law.

(2) The decision of the Court of Session on any such appeal shall be final.

Registration of power of sale order

3

(1) A power of sale order has no effect-

(a) unless it is registered within the period of 14 days after the relevant day; and

(b) until the beginning of the forty-second day after the day on which it is so registered.

(2) In sub-paragraph (1)(a) above, "the relevant day" means, in relation to a power of sale order-

(a) the last day of the period of 14 days within which an appeal against the order may be lodged under paragraph 2(1) of this schedule; or

(b) if such an appeal is duly lodged, the day on which the appeal is abandoned or determined.

Exercise of power of sale

4 (1) An owner in whose favour a power of sale order is granted may exercise the power conferred by the order by private bargain or by exposure to sale.

(2) However, in either case, the owner shall-

(a) advertise the sale; and

(b) take all reasonable steps to ensure that the price at which the sale subjects are sold is the best that can reasonably be obtained.

(3) In advertising the sale in pursuance of sub-paragraph (2)(a) above, the owner shall, in particular, ensure that there is placed and maintained on the sale subjects a conspicuous sign-

(a) advertising the fact that the sale subjects are for sale; and

(b) giving the name and contact details of the owner or of any agent acting on the owner's behalf in connection with the sale.

(4) So far as may be necessary for the purpose of complying with sub-paragraph (3) above, the owner or any person authorised by the owner shall be entitled to enter any part of the sale subjects not owned, or not owned exclusively, by that owner.

Distribution of proceeds of sale

5 (1) An owner selling the sale subjects (referred to in this paragraph as the "selling owner") shall, within seven days of completion of the sale-

(a) calculate each owner's share; and

(b) apply that share in accordance with sub-paragraph (2) below.

(2) An owner's share shall be applied-

(a) first, to repay any amounts due under any heritable security affecting that owner's flat or former flat;

(b) next, to defray any expenses properly incurred in complying with paragraph (a) above; and

(c) finally, to pay to the owner the remainder (if any) of that owner's share.

(3) If there is more than one heritable security affecting an owner's flat or former flat, the owner's share shall be applied under paragraph (2)(a) above in relation to each security in the order in which they rank.

(4) If any owner cannot by reasonable inquiry be identified or found, the selling owner shall consign the remainder of that owner's share in the sheriff court.

(5) On paying to another owner the remainder of that owner's share, the selling owner shall also give to that other owner-

(a) a written statement showing-

(i) the amount of that owner's share and of the remainder of it; and

(ii) how that share and remainder were calculated; and

(b) evidence of-

(i) the total amount of the proceeds of sale; and
(ii) any expenses properly incurred in connection with the sale and in complying with sub-paragraph (2)(a) above.

(6) In this paragraph-

"remainder", in relation to an owner's share, means the amount of that share remaining after complying with sub-paragraph (2)(a) and (b) above;

"share", in relation to an owner, means the share of the net proceeds of sale to which that owner is entitled in accordance with subsection (4) or, as the case may be, subsection (5) of section 22.

Automatic discharge of heritable securities

6 Where-

(a) an owner-

(i) sells the sale subjects in pursuance of a power of sale order; and
(ii) grants a disposition of those subjects to the purchaser or the purchaser's nominee; and

(b) that disposition is duly registered in the Land Register of Scotland or recorded in the Register of Sasines,

all heritable securities affecting the sale subjects or any part of them shall, by virtue of this paragraph, be to that extent discharged.

SCHEDULE 4

(introduced by section 25)

AMENDMENTS OF TITLE CONDITIONS (SCOTLAND) ACT 2003

1

The Title Conditions (Scotland) Act 2003 (asp 9) shall be amended as follows.

2

In section 3(8) (waiver, mitigation and variation of real burdens), for "the holder" there shall be substituted "a holder".

3

In section 4 (creation of real burdens), in subsection (7), after "sections" there shall be inserted "53(3A)".

4

In section 10 (affirmative burdens: continuing liability of former owner)-

(a) in subsection (2), at the beginning there shall be inserted "Subject to subsection (2A) below,";

(b) after subsection (2) there shall be inserted-

"(2A) A new owner shall be liable as mentioned in subsection (2) above for any relevant obligation consisting of an obligation to pay a share of costs relating to maintenance or work (other than local authority work) carried out before the acquisition date only if-

(a) notice of the maintenance or work-

(i) in, or as near as may be in, the form set out in schedule 1A to this Act; and
(ii) containing the information required by the notes for completion set out in that schedule,

(such a notice being referred to in this section and section 10A of this Act as a "notice of potential liability for costs") was registered in relation to the burdened property at least 14 days before the acquisition date; and

(b) the notice had not expired before the acquisition date.

(2B) In subsection (2A) above-

"acquisition date" means the date on which the new owner acquired right to the burdened property; and

"local authority work" means work carried out by a local authority by virtue of any enactment."; and

(c) at the end there shall be added-

"(5) This section does not apply in any case where section 12 of the Tenements (Scotland) Act 2004 (asp 11) applies.".

5

After section 10 there shall be inserted-

"10A Notice of potential liability for costs: further provision

(1) A notice of potential liability for costs-

(a) may be registered in relation to burdened property only on the application of-

(i) an owner of the burdened property;

(ii) an owner of the benefited property; or

(iii) any manager; and

(b) shall not be registered unless it is signed by or on behalf of the applicant.

(2) A notice of potential liability for costs may be registered-

(a) in relation to more than one burdened property in respect of the same maintenance or work; and

(b) in relation to any one burdened property, in respect of different maintenance or work.

(3) A notice of potential liability for costs expires at the end of the period of 3 years beginning with the date of its registration, unless it is renewed by being registered again before the end of that period.

(4) This section applies to a renewed notice of potential liability for costs as it applies to any other such notice.

(5) The Keeper of the Registers of Scotland shall not be required to investigate or determine whether the information contained in any notice of potential liability for costs submitted for registration is accurate.

(6) The Scottish Ministers may by order amend schedule 1A to this Act."

6 In section 11 (affirmative burdens: shared liability), after subsection (3) there shall be inserted-

"(3A) For the purposes of subsection (3) above, the floor area of a flat is calculated by measuring the total floor area (including the area occupied by any internal wall or other internal dividing structure) within its boundaries; but no account shall be taken of any pertinents or any of the following parts of a flat-

- (a) a balcony; and
- (b) except where it is used for any purpose other than storage, a loft or basement."

7 In section 25 (definition of the expression "community burdens"), in subsection (1)(a), for "four" there shall be substituted "two".

8 In section 29 (power of majority to instruct common maintenance)-

(a) in subsection (2)-
(i) in paragraph (b)-
(A) for the words from the beginning to "that" where it first occurs there shall be substituted "subject to subsection (3A) below, require each"; and
(B) for sub-paragraph (ii) there shall be substituted-
"(ii) with such person as they may nominate for the purpose,"; and

(ii) paragraph (c) shall be omitted;
(b) after subsection (3) there shall be inserted-
"(3A) A requirement under subsection (2)(b) above that each owner deposit a sum of money-

(a) exceeding £100; or
(b) of £100 or less where the aggregate of that sum taken together with any other sum or sums required (otherwise than by a previous notice under this subsection) in the preceding 12 months to be deposited under that subsection by each owner exceeds £200,
shall be made by written notice to each owner and shall require the sum to be deposited into such account (the "maintenance account") as the owners may nominate for the purpose.

(3B) The owners may authorise a manager or at least two other persons (whether or not owners) to operate the maintenance account on their behalf.";

(c) in subsection (4), for "(2)(b)" there shall be substituted "(3A)";
(d) after subsection (6) there shall be inserted-
"(6A) The notice given under subsection (2)(b) above may specify a date as a refund date for the purposes of subsection (7)(b)(i) below.";

(e) in subsection (7)(b)-
(i) in sub-paragraph (i), for "the fourteenth" there shall be substituted"-

(A) where the notice under subsection (2)(b) above specifies a refund date, that date;
or

(B) where that notice does not specify such a date, the twenty-eighth";

(ii) in sub-paragraph (ii), for "(4)(h)" there shall be substituted
"(3B)";

(f) after subsection (7) there shall be inserted-

"(7A) A former owner who, before ceasing to be an owner, deposited sums in compliance with a requirement under subsection (2)(b) above, shall have the same entitlement as an owner has under subsection (7)(b) above.";

(g) in subsection (8), for "(2)(b)" there shall be substituted "(3A)";
and

(h) after subsection (9) there shall be inserted-

"(10) The Scottish Ministers may by order substitute for the sums for the time being specified in subsection (3A) above such other sums as appear to them to be justified by a change in the value of money appearing to them to have occurred since the last occasion on which the sums were fixed.".

9 After section 31 there shall be inserted-

"31A Disapplication of provisions of sections 28, 29 and 31 in certain cases

(1) Sections 28(1)(a) and (d) and (2)(a), 29 and 31 of this Act shall not apply in relation to a community consisting of one tenement.

(2) Sections 28(1)(a) and (d) and 31 of this Act shall not apply to a community in any period during which the development management scheme applies to the community.".

10 In section 33 (majority etc. variation and discharge of community burdens)-

(a) in subsection (1)(b), the words "where no such provision is made," shall be omitted; and

(b) in subsection (2)(a), at the beginning there shall be inserted "where no such provision as is mentioned in subsection (1)(a) above is made,".

11 In section 35 (variation and discharge of community burdens by owners of adjacent units), in subsection (1), the words "in a case where no such provision as is mentioned in section 33(1)(a) of this Act is made" shall be omitted.

12 In section 43 (rural housing burdens)-

(a) in subsection (1), after "burden" where it first occurs there shall be inserted "over rural land"; and

(b) in subsection (6), for "on rural land or to provide rural" there shall be substituted "or".

13 In section 45 (economic development burdens), subsection (6) shall be omitted.

14 In section 53 (common schemes: related properties), after subsection (3) there shall be inserted-

"(3A) Section 4 of this Act shall apply in relation to any real burden to which subsection (1) above applies as if-

- (a) in subsection (2), paragraph (c)(ii);
- (b) subsection (4); and
- (c) in subsection (5), the words from "and" to the end, were omitted."

15 In section 90 (powers of Lands Tribunals as respects title conditions), in subsection (8A), for "application" there shall be substituted "disapplication".

16 In section 98 (granting certain applications for variation, discharge, renewal or preservation of title conditions), in paragraph (b)(i), for the words "the owners of all" there shall be substituted "all the owners (taken as a group) of".

17 In section 99 (granting applications as respects development management schemes), in subsection (4)(a), for the words "the owners" there shall be substituted "all the owners (taken as a group)".

18 In section 119 (savings and transitional provision etc.), subsection (9) shall be omitted.

19 In section 122(1) (interpretation)-

- (a) the definition of "flat" shall be omitted;
- (b) after the definition of "Lands Tribunal" there shall be inserted-
""local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);"; and

- (c) for the definition of "tenement" there shall be substituted-
""tenement" has the meaning given by section 26 of the Tenements (Scotland) Act 2004 (asp 11); and references to a flat in a tenement shall be construed accordingly;".

20 After schedule 1 there shall be inserted-

"SCHEDULE 1A

*(introduced by
section 10(2A))*

FORM OF NOTICE OF POTENTIAL LIABILITY FOR COSTS

"NOTICE OF POTENTIAL LIABILITY FOR COSTS

This notice gives details of certain maintenance or work carried out in relation the property specified in the notice. The effect of the notice is that a person may, on becoming the owner of the property, be liable by virtue of section 10(2A) of the Title Conditions (Scotland) Act 2003 (asp 9) for any outstanding costs relating to the maintenance or work.

Property to which the notice relates:

(see note 1 below)

Description of the maintenance or work to which notice relates:

(see note 2 below)

Person giving notice:

(see note 3 below)

Signature:

(see note 4 below)

Date of signing:"

Notes for completion

(These notes are not part of the notice)

1 Describe the property in a way that is sufficient to identify it. Where the property has a postal address, the description must include that address. Where title to the property has been registered in the Land Register of Scotland, the description must refer to the title number of the property or of the larger subjects of which it forms part. Otherwise, the description should normally refer to and identify a deed recorded in a specified division of the Register of Sasines.

2 Describe the maintenance or work in general terms.

3 Give the name and address of the person applying for registration of the notice ("the applicant") or the applicant's name and the name and address of the applicant's agent.

4 The notice must be signed by or on behalf of the applicant."