## Tenements (Scotland) Bill

[AS INTRODUCED]

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Tenements (Scotland) Bill

[AS INTRODUCED]

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.

2 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.

3 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.

Tenement Management Scheme

4 Application of the Tenement Management Scheme

(1) The Tenement Management Scheme (referred to in this section as “the Scheme”), which is set out in the schedule 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 full amount of those scheme costs (in so far as any of that amount is not to be met by someone other than an owner) is to be met by one or more of the owners.

(7) Subject to subsection (10) below, the provisions of rule 5 of the Scheme shall apply, so far as relevant, for the purpose of supplementing rule 4.

(8) Rule 6 of the Scheme shall apply to the extent that there is no tenement burden making provision for an owner to instruct or carry out any emergency work as defined in that rule.

(9) The provisions of—
   (a) rule 7; and
   (b) subject to subsection (10) below, rule 8,
   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.

(10) The provisions of rules 5 and 8 are subject to any different provision in any tenement burden.

(11) 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 appropriate.

(12) 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.

(13) 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) a management scheme other than the development management scheme applies as respects the management of a tenement; and
   (b) a decision is made by the owners in accordance with the scheme,
any owner who, at the time the decision was made, was not in favour of the decision may, by summary application, apply to the sheriff for an order annulling the decision.

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

(3) An application by an owner under subsection (1) above shall be made—

(a) in a case where the decision was made at a meeting attended by the owner, 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 sent to the owner for the time being of the flat in question.

(4) The sheriff may, if satisfied that the decision—

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

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

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

(5) 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 (4) 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.

(6) Where the sheriff makes an order under subsection (4) 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).

(7) A party may not later than fourteen days after the date of—

(a) an order under subsection (4) above; or

(b) an interlocutor dismissing such an application,

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

(8) A decision of the Court of Session on an appeal under subsection (7) above shall be final.

(9) 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 (3) 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 (7) 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.

(10) Subsection (9) 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; or

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

(2) Without prejudice to subsection (1) above, where the development management scheme applies, an application under that subsection may be made by the manager of any owners’ association established by the scheme.

(3) 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.

(4) A party may not later than fourteen days after the date of—

(a) an order under subsection (3) above; or

(b) an interlocutor dismissing such an application,

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

(5) A decision of the Court of Session on an appeal under subsection (4) 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.

9 **Prohibition on interference with support or shelter etc.**

5 (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.

10 (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.

10 **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.

**Repairs: costs and access**

11 **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) 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) 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.

(4) For the purposes of this section “relevant costs” means, as respects a flat—

(a) the share of any costs for which the owner is liable by virtue of the Tenement Management Scheme; and

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

(5) 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.

12 **Prescriptive period for costs to which section 11 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 11 of the Tenements (Scotland) Act 2003 (asp 9) applies;”; and

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

13 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.

14 Access for maintenance 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 the manager of 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 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; and

(f) where floor area is relevant for the purposes of determining any liability of owners, measuring floor area.

(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 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 or manager who gave notice that access was required; or
(b) such person as the owner or, as the case may be, manager may authorise in writing 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—
(a) the owner who authorised that person; or
(b) if the person was authorised by a manager, the owners’ association concerned,
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.

Insurance

15 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) Where a tenement burden requires each flat to be insured by way of a common policy of insurance as respects the entire tenement building, then for the purposes of satisfying the duty imposed on an owner by subsection (1) above, the contract of insurance mentioned in that subsection shall be a common policy of insurance.

(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—
(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) evidence of 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 policy (or a copy of it) and the evidence of payment.

(6) The duty imposed by subsection (1) above on an owner may be enforced by any other owner.
Demolition and abandonment of tenement building

16 Demolition of tenement building not to affect ownership

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

17 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.).

18 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 require that the entire site be sold.
(4) Except where a tenement burden otherwise provides, the 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 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 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 this section references to the site are references to the solum of the tenement building that occupied the site and to the airspace that is directly above the solum.

19 Effect of demolition and sale on certain undischarged securities

(1) Where—

(a) a tenement building is demolished and the site is sold; but

(b) a heritable security over any flat formerly comprehended by the tenement has not, on or before such sale, been discharged,

the heritable security shall, by virtue of this subsection, be varied so as to secure instead a pro indiviso interest over the site fixed having regard to the total number of flats which were formerly comprehended by the tenement.

(2) A variation such as is mentioned in subsection (1) above shall take effect as from the date on which the deed conveying the site is recorded in the Register of Sasines or, as the case may be, the terms of the deed are registered in the Land Register of Scotland.

(3) In this section “site” shall be construed in accordance with section 18(7) of this Act.

20 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 return to occupy any part of the tenement building,

any owner shall be entitled to require that the tenement building be sold.

(2) Subsections (4) and (5) of section 18 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.

21 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

Amendments of Title Conditions (Scotland) Act 2003

(1) The Title Conditions (Scotland) Act 2003 (asp 9) shall be amended in accordance with subsections (2) to (5) below.

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

(3) In section 10 (affirmative burdens: continuing liability of former owner), at the end there shall be added—

“(5) This section does not apply in any case where section 11 of the Tenements (Scotland) Act 2004 (asp 00) applies.”.

(4) 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 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 persons to operate the maintenance account on their behalf.”;

(c) in subsection (4), for “(2)(b)” there shall be substituted “(3A)”;

(d) in subsection (7)(b)(ii), for “(4)(h)” there shall be substituted “(3B)”;

(e) in subsection (8), for “(2)(b)” there shall be substituted “(3A)”;

(f) 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 appropriate.”.

(5) After section 31 there shall be inserted—

“31A Disapplication of sections 28, 29 and 31 where community consists of a tenement

Sections 28, 29 and 31 of this Act do not apply in relation to a community consisting of one tenement.”.

23 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.

24 Meaning of “owner”, determination of liability etc.

(1) Subject to subsection (2) below, in this Act “owner” means a person who has right to a 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.

(2) 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.

(3) Subject to subsection (4) 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.
(4) Any reference to an owner in sections 5(1) and (3), 6(1), 8(3), 9, 10, 14(1), (6) and (7), 15(5) and (6), 18, 20 and 21 of this Act shall be construed as a reference to any person who owns a flat either solely or in common with another.

(5) 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.

25 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” means a dwelling-house, or any business or other premises, in a tenement building;

“lift” includes its shaft and operating machinery;

“owner” shall be construed in accordance with section 24 of this Act;

“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 23 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 the schedule 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 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.

(3) For the purposes of any provision of this Act, a document sent shall be taken to be sent on the day on which it is despatched (by whatever means).

26 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.

27 Orders
(1) Any power of the Scottish Ministers to make orders under this Act shall be exercisable by statutory instrument.
(2) A statutory instrument containing an order under this Act (except an order under section 29(2) or, where subsection (3) applies, section 26) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
(3) Where an order under section 26 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.

28 Crown application
This Act, except section 15, binds the Crown.

29 Short title and commencement
(1) This Act may be cited as the Tenements (Scotland) Act 2004.
(2) This Act (other than this section) shall come into force on such day as the Scottish Ministers may by order appoint; and different days may be appointed for different purposes.
SCHEDULE
(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—

(a) any part of a tenement that is the common property of two or more of the owners,

(b) any part of a tenement (not being common property of the type mentioned in paragraph (a) above) that, by virtue of a tenement burden, must be maintained by two or more of the owners, or

(c) with the exceptions mentioned in rule 1.3, the following other parts of a tenement building—

(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 sub-paragraphs), 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 in accordance with this scheme for maintenance of 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

Except as mentioned in rule 2.6, a scheme decision is made by majority vote of all the votes allocated.

2.6 Case where unanimity required

If the number of votes allocated does not exceed three, a scheme decision is made by unanimous vote of all the votes allocated.

2.7 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.

2.8 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.

2.9 Consultation where two or more persons own flat

For the purposes of rule 2.8, 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.

2.10 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.
2.11 **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 2.12, annul that decision by sending a notice stating that the decision is annulled to each of the other owners.

2.12 **Time limits for rule 2.11**

The time within which a notice under rule 2.11 must be sent is—

(a) if the scheme decision was made at a meeting attended by the owner (or any of the owners) sending the notice, 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 sent to the owner or owners (that date being, where notification was sent to owners on different dates, the date on which it was sent 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—

   (i) decide that maintenance (costing no more than an amount specified by the owners) needs to be carried out to scheme property and to instruct it, and

   (ii) arrange for an inspection as mentioned in paragraph (b),

(e) to arrange for the tenement a common policy of insurance complying with section 15 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 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,

(g) to authorise any maintenance of scheme property already carried out by an owner,

(h) to modify or revoke any scheme decision.
3.2 **Scheme decisions relating to maintenance**

If the owners decide under rule 3.1(a) to carry out maintenance to scheme property or if a manager decides, by virtue of a scheme decision under rule 3.1(d), 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 scheme decision under rule 3.2(c) requiring each owner to 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 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 scheme decision is made under rule 3.2(c) in accordance with rule 3.3—

(a) the owners may make a scheme decision authorising persons 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(h) 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) if—

   (i) the maintenance is not commenced by the fourteenth day after the proposed date for its commencement as specified in the notice by virtue of paragraph (b)(vi) above, and

   (ii) the owner 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 owner in compliance with the scheme decision under rule 3.2(c),

the owner 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,

(g) 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,

(h) 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 owners—

   (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.

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 maintenance by virtue of rule 3.2(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 a person by virtue of rule 3.1(c)(i),
(f) the cost of any common insurance to cover the tenement arranged by virtue of rule 3.1(e),
(g) 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 (g).

4.2 Maintenance and running costs

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 Provision supplementary to rule 4.2

Where any part of a tenement is scheme property by virtue of both paragraphs (a) and (c) of rule 1.2—

(a) unless paragraph (b) applies, it is to be treated for the purposes of rule 4.2 as scheme property mentioned only in rule 1.2(a),
(b) where—
   (i) the part in question is the roof over the close, and
   (ii) that part is common property by virtue of section 3(1)(a) of this Act,

it is to be treated for the purposes of rule 4.2 as scheme property mentioned only in rule 1.2(c).

4.4 Remuneration of manager

Any scheme costs mentioned in rule 4.1(e) are shared equally among the flats, and each owner is liable accordingly.
4.5 Insurance premium

Any scheme costs mentioned in rule 4.1(f) are shared among the flats in such proportions as may be determined by the owners by virtue of rule 3.1(e), and each owner is liable accordingly.

4.6 Management costs

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

4.7 When liability arises

With the exceptions mentioned in rule 4.8, each owner is liable for any scheme costs from the date when the scheme decision to incur those costs is made, and for the purposes of this rule that date is—

(a) where the decision is made at a meeting attended by the owner, the date of the meeting, or

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

4.8 Exceptions to rule 4.7

The exceptions are that each owner is liable for—

(a) the cost of any emergency work from the date on which the work is instructed,

(b) any scheme costs mentioned in rule 4.1(d) from the date of any statutory notice requiring the carrying out of the work to which the costs relate,

(c) any accumulating scheme costs (such as the cost of an insurance premium) on a daily basis.

RULE 5 – SCHEME COSTS: SPECIAL CASES

5.1 Liability where two or more persons own flat

Where two or more persons own a flat—

(a) they are severally liable for the share of any scheme costs for which the owner of that flat is liable in accordance with rule 4, and

(b) as between themselves they are liable for that share in the proportions in which they own the flat.

5.2 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 under rule 3.1(f) determining that the share (or a portion of it) should not be paid by that owner, or

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

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

(ii) he cannot be contacted,
then that share must be paid by the other owners in accordance with rule 4 as if it were a scheme cost for which they are liable, but where paragraph (b) applies that owner is liable to each of those other owners for the amount paid by each of them.

5.3 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 in accordance with rule 4 the share of those scheme costs due by each of the other owners, that owner is left out of account.

RULE 6 – EMERGENCY WORK

6.1 Power to instruct or carry out
Any owner may instruct or carry out emergency work.

6.2 Liability for cost
The owners are liable for the cost of any emergency work instructed or carried out under rule 6.1 as if the cost of that work were scheme costs mentioned in rule 4.1(a).

6.3 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 7 – ENFORCEMENT

7.1 Scheme binding on owners
This scheme binds the owners.

7.2 Scheme decision to be binding
A scheme decision is binding on the owners and their successors as owners.

7.3 Enforceability of scheme decisions
Any obligation imposed by this scheme or arising from a scheme decision may be enforced by any owner.
7.4 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 7.3 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 8 – GENERAL

8.1 Validity of scheme decisions

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

8.2 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.

8.3 Methods of “sending” for the purposes of rule 8.2

The reference in rule 8.2 to sending a notice is to its being—

(a) posted,

(b) delivered, or

(c) transmitted by electronic means.

8.4 Giving of notice to owner where owner’s name is not known

Where the name of an owner is not known, a notice shall be taken for the purposes of rule 8.2(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”.

8.5 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.
Tenements (Scotland) Bill
[AS INTRODUCED]

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.

Introduced by: Ms Margaret Curran
On: 30 January 2004
Supported by: Cathy Jamieson, Mrs Mary Mulligan
Bill type: Executive Bill