

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Demolition and Abandonment of Tenement Building

Section 22 – Use and disposal of site where tenement building demolished

104. This section provides for the use and disposal of the site where a tenement building has been completely demolished and the former flats were owned by different persons.
105. *Subsection (2)* restricts the use of the “site”, which is defined in *subsection (8)* as the solum of the tenement building that occupied the site, the airspace that is directly above the solum and any land pertaining as a means of access to the tenement immediately before its demolition. It provides that building on or other development of the site is prohibited except where all the owners of the former flats agree or where all the owners are required to do so (by the title deeds or otherwise). *Subsection (6)* provides for enforcement of the prohibition by the owners of the other former flats.
106. Under *subsection (2)* owners are prohibited from developing the site except under two conditions. When these conditions are not in place, *subsection (3)* provides that any owner may apply to the sheriff for the power to sell the entire site in accordance with schedule 3. Where a former flat is owned in common, any *pro indiviso* owner also has this right under *section 28(5)*.
107. *Subsections (4) and (5)* deal with apportioning the proceeds of the sale of the site. Under *subsection (4)*, unless a tenement burden provides otherwise, the proceeds of the sale are shared equally among all the flats, subject to *subsection (5)*. Under this subsection, where the floor area of the largest flat is more than one and a half times that of the smallest flat, then the proceeds of the sale are shared in proportion to the floor area. The method for calculating the floor area is set out in *section 29(2)*. But if the proceeds are to be divided other than equally, this will only be possible if there is available evidence of the differing floor areas of the flats or former flats.
108. *Subsection (7)* provides that the proceeds of the sale will be distributed to the owners net of the expenses incurred in connection with the sale.