

*Status: Point in time view as at 08/12/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Tenements (Scotland) Act 2004. (See end of Document for details)*

## SCHEDULE 1

(introduced by section 4)

### TENEMENT MANAGEMENT SCHEME

#### RULE 1 –

#### SCOPE AND INTERPRETATION

##### *Scope of scheme*

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

##### **Commencement Information**

- II** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, art. 2(1)(d)

##### ***Meaning of “scheme property”***

- 1.2 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.

##### **Commencement Information**

- II** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, art. 2(1)(d)

##### ***Parts not included in rule 1.2(c)***

- 1.3 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,

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- (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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

***Meaning of “scheme decision”***

- 1.4 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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

***Other definitions***

- 1.5 In this scheme—
- “maintenance” includes repairs and replacement, [<sup>F1</sup>the installation of insulation,] 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.

**Textual Amendments**

**F1** Words in [sch. 1 rule 1.5](#) inserted (1.4.2010) by [Climate Change \(Scotland\) Act 2009 \(asp 12\)](#), [ss. 69, 100\(2\)](#) (with [s. 95](#)); [S.S.I. 2009/341](#), [art. 2\(3\)](#)

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

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### ***Rights of co-owners***

- 1.6 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.

#### **Commencement Information**

- II** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, art. 2(1)(d)

## **RULE 2 –**

### **PROCEDURE FOR MAKING SCHEME DECISIONS**

#### ***Making scheme decisions***

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

#### **Commencement Information**

- II** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, art. 2(1)(d)

#### ***Allocation and exercise of votes***

- 2.2 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.

#### **Commencement Information**

- II** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, art. 2(1)(d)

#### ***Qualification on allocation of votes***

- 2.3 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.

#### **Commencement Information**

- II** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, art. 2(1)(d)

#### ***Exercise of vote where two or more persons own flat***

- 2.4 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—

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- (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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), **art. 2(1)(d)**

***Decision by majority***

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

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), **art. 2(1)(d)**

***Notice of meeting***

2.6 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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), **art. 2(1)(d)**

***Consultation of owners if scheme decision not made at meeting***

2.7 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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), **art. 2(1)(d)**

***Consultation where two or more persons own flat***

2.8 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.

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**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

***Notification of scheme decisions***

- 2.9 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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

***Case where decision maybe annulled by notice***

- 2.10 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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

***Time limits for rule 2.10***

- 2.11 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).

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

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### RULE 3 –

#### MATTERS ON WHICH SCHEME DECISIONS MAY BE MADE

##### *Basic scheme decisions*

- 3.1 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.

##### **Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

##### *Scheme decisions relating to maintenance*

- 3.2 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),

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- (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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

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

3.3 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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

***Provision supplementary to rule 3.3***

3.4 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

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- 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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

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

- 3.5 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,



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

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, art. 2(1)(d)

**RULE 4 –**

**SCHEME COSTS: LIABILITY AND APPORTIONMENT**

***Meaning of “scheme costs”***

- 4.1 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).

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, art. 2(1)(d)

***Maintenance and running costs***

- 4.2 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—

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- (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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

***Scheme costs relating to roof over the close***

- 4.3 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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

***Insurance premium***

- 4.4 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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

***Other scheme costs***

- 4.5 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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

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## 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
- (b) the share cannot be recovered for some other reason such as that—
  - (i) the estate of that owner has been sequestered, 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.

#### Commencement Information

**II** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, art. 2(1)(d)

## RULE 6 –

### PROCEDURAL IRREGULARITIES

#### *Validity of scheme decisions*

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

#### Commencement Information

**II** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, art. 2(1)(d)

#### *Liability for scheme costs where procedural irregularity*

- 6.2 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.

#### Commencement Information

**II** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, art. 2(1)(d)

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## RULE 7 –

### EMERGENCY WORK

#### *Power to instruct or carry out*

7.1 Any owner may instruct or carry out emergency work.

#### **Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

#### *Liability for cost*

7.2 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).

#### **Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

#### *Meaning of “emergency work”*

7.3 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.

#### **Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

## RULE 8 –

### ENFORCEMENT

#### *Scheme binding on owners*

8.1 This scheme binds the owners.

#### **Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

#### *Scheme decision to be binding*

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

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**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, art. 2(1)(d)

***Enforceability of scheme decisions***

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

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, art. 2(1)(d)

***Enforcement by third party***

8.4 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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, art. 2(1)(d)

**RULE 9 –**

**GIVING OF NOTICE**

***Giving of notice***

9.1 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.

**Commencement Information**

**II** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, art. 2(1)(d)

***Methods of “sending” for the purposes of rule 9.1***

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

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

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**Commencement Information**

**I1** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, **art. 2(1)(d)**

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

9.3 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".

**Commencement Information**

**I1** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, **art. 2(1)(d)**

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

9.4 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.

**Commencement Information**

**I1** Sch. 1 in force at 28.11.2004 by S.S.I. 2004/487, **art. 2(1)(d)**

**<sup>F2</sup>SCHEDULE 2**

*(introduced by section 12(3))*

**FORM OF NOTICE OF POTENTIAL LIABILITY FOR COSTS**

**Textual Amendments**

**F2** Words in first line of introductory paragraph in form of Notice in [sch. 2](#) inserted (6.12.2004) by [The Tenements \(Scotland\) Act 2004 \(Notice of Potential Liability for Costs\) Amendment Order 2004 \(S.S.I. 2004/490\)](#), arts. 1, **2(2)**

**Commencement Information**

**I2** Sch. 2 in force at 28.11.2004 by S.S.I. 2004/487, **art. 2(1)(d)**

**“NOTICE OF POTENTIAL LIABILITY FOR COSTS**

This notice gives details of certain maintenance or work carried out [<sup>F2</sup>, or to be 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.

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*Status: Point in time view as at 08/12/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Tenements (Scotland) Act 2004. (See end of Document for details)*

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**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.

*Status: Point in time view as at 08/12/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Tenements (Scotland) Act 2004. (See end of Document for details)*

- (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—
- [<sup>F3</sup>(a) where the flat or former flat has been registered in the Land Register of Scotland, the description refers to the number of the title sheet;]
  - (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.

#### Textual Amendments

**F3** Sch. 3 para. 1(6)(a) substituted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, [sch. 5 para. 46\(3\)](#) (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

#### Commencement Information

**I3** Sch. 3 para. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

#### *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.



*Status: Point in time view as at 08/12/2014.*

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#### Commencement Information

**I4** Sch. 3 para. 2 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

#### *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.

#### Commencement Information

**I5** Sch. 3 para. 3 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

#### *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.

#### Commencement Information

**I6** Sch. 3 para. 4 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

*Status: Point in time view as at 08/12/2014.*

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### *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.

#### **Commencement Information**

**I7** Sch. 3 para. 5 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

### *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,

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

#### Commencement Information

**18** Sch. 3 para. 6 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

### 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—

*Status: Point in time view as at 08/12/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Tenements (Scotland) Act 2004. (See end of Document for details)*

### **“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—

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- “(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—

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**“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—

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

(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.

*Status: Point in time view as at 08/12/2014.*

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



**Status:**

Point in time view as at 08/12/2014.

**Changes to legislation:**

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