



# Tenements (Scotland) Act 2004

## 2004 asp 11

### *Miscellaneous and general*

#### **25 Amendments of Title Conditions (Scotland) Act 2003**

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

#### **26 Meaning of “tenement”**

- (1) In this Act, “tenement” means a building or a part of a building which comprises two related flats which, or more than two such flats at least two of which—
- (a) are, or are designed to be, in separate ownership; and
  - (b) are divided from each other horizontally,
- and, except where the context otherwise requires, includes the solum and any other land pertaining to that building or, as the case may be, part of the building; and the expression “tenement building” shall be construed accordingly.
- (2) In determining whether flats comprised in a building or part of a building are related for the purposes of subsection (1), regard shall be had, among other things, to—
- (a) the title to the tenement; and
  - (b) any tenement burdens,
- treating the building or part for that purpose as if it were a tenement.

#### **27 Meaning of “management scheme”**

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

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

**28 Meaning of “owner”, determination of liability etc.**

- (1) In this Act, references to “owner” without further qualification are, in relation to any tenement, references to the owner of a flat in the tenement.
- (2) Subject to subsection (3) below, in this Act “owner” means, in relation to a flat in a tenement, a person who has right to the flat whether or not that person has completed title; but if, in relation to the flat (or, if the flat is held *pro indiviso*, any *pro indiviso* share in it) more than one person comes within that description of owner, then “owner” means such person as has most recently acquired such right.
- (3) Where a heritable security has been granted over a flat and the heritable creditor has entered into lawful possession, “owner” means the heritable creditor in possession of the flat.
- (4) Subject to subsection (5) below, if two or more persons own a flat in common, any reference in this Act to an owner is a reference to both or, as the case may be, all of them.
- (5) Any reference to an owner in sections 5(1) and (2), 6(1), 8(3), 9, 10, 12 to 14, 17(1), (6) and (7), 18(5) and (6), 19, 22, 23 and 24 of, and schedule 3 to, this Act shall be construed as a reference to any person who owns a flat either solely or in common with another.
- (6) Subsections (2) to (5) above apply to references in this Act to the owner of a part of a tenement as they apply to references to the owner of a flat, but as if references in them to a flat were to the part of the tenement.
- (7) Where two or more persons own a flat in common—
  - (a) they are severally liable for the performance of any obligation imposed by virtue of this Act on the owner of that flat; and
  - (b) as between (or among) themselves they are liable in the proportions in which they own the flat.

**29 Interpretation**

- (1) In this Act, unless the content otherwise requires—
  - “chimney stack” does not include flue or chimney pot;
  - “close” means a connected passage, stairs and landings within a tenement building which together constitute a common access to two or more of the flats;
  - “demolition” includes destruction and cognate expressions shall be construed accordingly; and demolition may occur on one occasion or over any period of time;
  - “the development management scheme” has the meaning given by section 71(3) of the Title Conditions (Scotland) Act 2003 ([asp 9](#));
  - “door” includes its frame;
  - “flat” includes any premises whether or not—
    - (a) used or intended to be used for residential purposes; or
    - (b) on the one floor;
  - “lift” includes its shaft and operating machinery;
  - “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 ([c. 39](#));
  - “owner” shall be construed in accordance with section 28 of this Act;

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

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

“sector” means—

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

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

“solum” means the ground on which a building is erected;

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

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

- (a) the tenement; or
- (b) any sector in the tenement;

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

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

“window” includes its frame.

- (2) The floor area of a flat is calculated for the purposes of this Act by measuring the total floor area (including the area occupied by any internal wall or other internal dividing structure) within its boundaries; but no account shall be taken of any pertinents or any of the following parts of a flat—
  - (a) a balcony; and
  - (b) except where it is used for any purpose other than storage, a loft or basement.

### **30 Giving of notice to owners**

- (1) Any notice which is to be given to an owner under or in connection with this Act (other than under or in connection with the Tenement Management Scheme) may be given in writing by sending the notice to—
  - (a) the owner; or
  - (b) the owner’s agent.
- (2) The reference in subsection (1) above to sending a notice is to its being—
  - (a) posted;
  - (b) delivered; or
  - (c) transmitted by electronic means.
- (3) Where an owner cannot by reasonable inquiry be identified or found, a notice shall be taken for the purposes of subsection (1)(a) above to be sent to the owner if it is posted or delivered to the owner’s flat addressed to “The Owner” or using some similar expression such as “The Proprietor”.

- (4) For the purposes of this Act—
- (a) a notice posted shall be taken to be given on the day of posting; and
  - (b) a notice transmitted by electronic means shall be taken to be given on the day of transmission.

### **31 Ancillary provision**

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act.
- (2) An order under this section may modify any enactment (including this Act), instrument or document.

### **32 Orders and regulations**

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act shall be exercisable by statutory instrument.
- (2) A statutory instrument containing an order or regulations under this Act (except an order under section 34(2) or, where subsection (3) applies, section 31) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3) Where an order under section 31 contains provisions which add to, replace or omit any part of the text of an Act, the order shall not be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Parliament.

### **33 Crown application**

This Act, except section 18, binds the Crown.

### **34 Short title and commencement**

- (1) This Act may be cited as the Tenements (Scotland) Act 2004.
- (2) This Act (other than this section, section 25 and schedule 4) shall come into force on such day as the Scottish Ministers may by order appoint; and different days may be appointed for different purposes.
- (3) Section 25 and schedule 4 shall come into force on the day after Royal Assent.