

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

BACKGROUND

3. The Act forms the third and final part of the Executive's current programme of property law reform and follows on from the [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#) and the [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#). Both these Acts, other than Part 6 of the Title Conditions (Scotland) Act 2003, have been fully in force since 28 November 2004. The Tenements (Scotland) Act 2004, with the exception of *section 18*, has also been in force since 28 November 2004.
4. Tenements form over a quarter of the housing stock in Scotland and come in all shapes and sizes. Most tenements are residential blocks, but office blocks also fall within the definition. So do large houses which have been divided into flats. This captures a much wider range of properties than is commonly imagined.
5. Common law rules governing the maintenance and management of tenements have developed since the 17th Century, but these are not comprehensive nor without anomaly. The development of the law on real burdens, however, has helped to impose obligations on successive owners to adhere to a detailed regime for management and repair of a tenement. These burdens are drawn up to suit the particular circumstances of the tenement.
6. But not all title deeds are comprehensive and they do not always provide burdens to specify how the owners are to decide on matters of mutual interest. If title deeds make no provision on one matter, the common law will apply on that one matter. The common law acts as a background or default law and most tenements, particularly new tenements, will have a detailed system of management provided by the title deeds to the property. The common law will only apply where there is a gap in the title deeds.