

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Miscellaneous and General

Schedule 1 - Tenement Management Scheme

Rule 2 – procedures for making scheme decisions

144. Rule 2.1 stipulates that any decision to be made by the owners must be in accordance with the provisions of rule 2. Such decisions will be “scheme decisions”. *Section 4(4)* of the Act provides, however, that if the title deeds contain procedures for the making of decisions by the owners and the same procedures apply to each flat, then the title provision will prevail. A decision made by the owners in accordance with the title provisions will also be a scheme decision (rule 1.4(b)).
145. Under rule 2.2, one vote is allocated to each flat and the right to vote can be exercised by the owner of that flat or somebody who is appointed by the owner. Under rule 2.3, no vote on a scheme decision relating to maintenance will be allocated to a flat if the owner of the flat is not liable for the maintenance, or the cost of maintenance, to that part of the tenement.
146. If two or more people own a flat, then the vote allocated to that flat can be exercised by any one of them under rule 2.4. If, however, the owners disagree on how the vote is to be cast, then no vote is accepted for that flat unless one of the owners owns more than a half share of the flat (in which case that owner will exercise the vote) or the vote is agreed among those owners who own more than a half share of the flat.
147. Scheme decisions are to be reached by simple majority (rule 2.5) meaning more than 50% of the total number of votes allocated.
148. Under rule 2.6, an owner wishing to call a meeting must give at least 48 hours notice of the date, time and purpose of the meeting. An owner may wish to propose that a scheme decision is made, but may not want to call a meeting. In this case, the other owners have to be consulted about the proposal under rule 2.7, except where it is impractical to do so, for example where an owner is absent at the time that the proposal is made. Under rule 2.8, the requirement to consult each owner is satisfied if only one of the co-owners of a flat is consulted.
149. Rule 2.9 provides that owners must be informed of scheme decisions as soon as is practicable. If the decision was made at a meeting then notification must be notified to all owners who were not present when the decision was made, by a person nominated at the meeting to do so. In any other situation, notification must be given to each of the owners by the owner who proposed that the decision be made. It is safer to notify in writing and rule 9.2 explains ways in which written notices can be given.
150. Under rule 8.2, once a scheme decision has been made it is binding on all the owners and, if the flat changes hands, on any incoming owner, even where the

*These notes relate to the Tenements (Scotland) Act 2004
(asp 11) which received Royal Assent on 22 October 2004*

decision is made not under rule 2 but under the provisions of the tenement burdens. Section 30 of the Title Conditions Act makes equivalent provision. [Section 5\(10\)](#) prevents implementation of the decision for 28 days where an owner did not vote in favour of a decision, as they have the right to apply to the sheriff court to have the decision annulled.

151. Under rule 2.10, the scheme also contains some protection for an owner or owners who are liable for 75% (or more) of the costs arising from a decision made about maintenance under rule 2.5. Any owner or owners who did not vote in favour of a scheme decision to instruct maintenance where they would be responsible for 75% or more of the costs can annul that decision by notifying the other owners within certain time limits.
152. These time limits are set out in rule 2.11. If a decision that an owner wishes to annul has been made at a meeting then notification of the annulment of that decision must be given within 21 days after the date of the meeting. In any other case notice of the annulment must be given within 21 days of receiving notification of the relevant decision.