

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Demolition and Abandonment of Tenement Building

Section 20 – Demolition of a tenement building not to affect ownership

97. This section provides, in *subsection (1)*, that an owner will continue to own the airspace formerly occupied by their flat after it is demolished. “Demolition” is defined in *section 29(1)*.
98. *Subsection (2)* ensures that any pertinents attaching to a tenement building immediately prior to demolition will continue to belong to their previous owners after demolition, even though they no longer serve a flat.

Section 21 – Cost of demolishing tenement building

99. This section explains how costs are to be apportioned when a tenement building is wholly or partially demolished. *Subsection (1)* provides a general rule of equality of contribution. This rule is concerned with the liability of owners amongst themselves and does not import liability in questions with third parties.
100. *Subsection (2)* qualifies the provisions in *subsection (1)* where the floor area of the largest flat in the tenement is more than one and a half times that of the smallest flat. In such instances the costs are apportioned according to floor area. Rules on the determination of the floor area are found in *section 29(2)*.
101. *Subsection (3)* specifies when an owner becomes liable for their share of the cost of demolition. Where an owner agrees to the proposal that the building should be demolished, they become liable for costs from the date of the agreement. In any other case, owners are liable from the date the demolition is instructed. This is particularly important where a flat changes hands while the work is in progress.
102. The rules for apportioning the costs of demolition are adapted under *subsection (4)* for cases of partial demolition. Only owners of the flats in the part demolished are liable for the costs of demolition.
103. This section is concerned with the liability of owners among themselves. It does nothing to disturb the rule, under section 123 of the Housing (Scotland) Act 1987, that a local authority that has carried out the demolition may recover the cost from the owners in such proportions as the owners may agree or, failing agreement, as is determined by arbitration.

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.

Section 23 – Sale of abandoned tenement building

109. This section provides that the owner of a flat in an abandoned tenement will have the right to apply to the sheriff for the power to sell the tenement building in accordance with schedule 3.
110. *Subsection (1)* sets out the circumstances where an owner can require that a tenement building should be sold. This is where the building, due to its poor condition, has not been occupied by any owner (or someone authorised by an owner) for a period of more than six months and it is unlikely that any owner or other person will occupy the building. “Owner” is defined under *section 28* of the Act and where the flat is owned in common any *pro indiviso* owner can exercise the right under *section 28(5)*.
111. The sale proceeds are divided in the same way under *subsection (2)* as when a site is sold following demolition.
112. *Subsection (3)* makes it clear that the right to sell the tenement includes the solum of the building, the airspace above and any land which afforded access to the tenement. The inclusion of the latter is to avoid the situation where the sale of an abandoned tenement may be frustrated because of a lack of access and the building may then become blighted.