

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Repairs: Costs and Access

Section 11 – Determination of when an owner’s liability for certain costs arises

60. *Section 11* is intended to ensure that there is a set of rules which will determine when liability for certain costs (“relevant costs”) arises, and that these rules will apply irrespective of whether the liability for that expenditure arises under the burdens in the title deeds, rule 4 of the Tenement Management Scheme or under the general provisions of the Act itself.
61. *Subsection (1)* makes it clear that an owner is liable for any relevant costs arising from a scheme decision from the date on which the scheme decision is made. *Subsection (5)* makes alternative provision for accumulating relevant costs. “Relevant costs” is defined in *subsection (9)*. It is wider than scheme costs. This is necessary because relevant costs for which an owner is liable by virtue of the management scheme in force for a particular tenement may not be restricted to “scheme costs”. Rule 4 of the Tenement Management Scheme applies only to “scheme costs”. But where the management scheme in operation for a particular tenement is wholly or partly made up of burdens contained in the title deeds, it may go much further than the Tenement Management Scheme. Where burdens do so, then the liability imposed would not come within the scope of “scheme costs”. The reference to “relevant costs” ensures that *section 11* provides one set of rules to determine when liability for costs arises, whether this arises under the Tenement Management Scheme, the burdens in title deeds or a combination of both.
62. *Subsection (2)* determines when a scheme decision is taken to be made in order to determine when an owner’s liability for certain costs arises. Under paragraph (a), this could be where the decision is taken at a meeting. It could happen that two people own a flat, but only one attends the meeting. It is preferable that liability for both arises on the same day, and even where a decision is taken by a majority at a meeting, the non-attending owners should be liable from that date even if they did not attend. Under paragraph (b), liability will arise in any other case on the date on which notice of the making of the decision is given to the owner. The decision could have been made by means of one owner going round the doors seeking the consent of enough owners to comprise a majority of the flats.
63. The rule in *subsection (3)* provides that an owner becomes liable for any relevant costs arising from emergency work from the date on which the work is instructed. *Subsection (4)* covers relevant costs which are recoverable by a local authority as a result of a statutory notice requiring the carrying out of the work to which those costs relate and liability will arise from the date of the notice. *Subsection (5)* does not deal with situations when liability arises under the statutory notice in a question with a local authority and deals only with “relevant costs” and therefore liability in questions arising under the management scheme for the tenement. *Subsection (5)* makes it clear that

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

liability for any accumulating relevant costs such as the cost of an insurance premium will arise on a daily basis.

64. Under *subsection (6)*, an owner is liable for any relevant costs arising from work instructed by a manager from the date on which the work is instructed. Again this does not determine the date of liability in questions with the manager, which may for example arise in a question of contract law rather than under the management scheme. *Subsection (1)* relates to work (or other costs) arising from a scheme decision. These are not mutually exclusive. A scheme decision might quite often be taken to carry out works and then a manager is given the task of instructing the work. Where both apply, the rule on determining the date of liability in *section 11(1)* will prevail.
65. *Subsection (7)* provides that where an owner is liable under *section 10* for any relevant costs arising from maintenance carried out by virtue of *section 8*, liability arises on the date on which the maintenance is completed.
66. *Subsection (8)* is a catch all provision to cover all relevant costs which fall within the scope of *section 11* but for which there is no specific rule provided. It is an equivalent provision to that in section 10(4)(b) of the Title Conditions Act for those cases where the cost arises from an obligation set out in burdens in title deeds. *Subsection (9)* explains that “relevant costs” means a share of any costs for which an owner is liable by virtue of the management scheme in operation for the particular tenement (under the burdens in the title deeds, the Tenement Management Scheme or a combination of both), but not under the development management scheme if that has been adopted by the owners. Relevant costs also cover costs which arise because of the Act itself.