

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Boundaries and Pertinents

Section 2 - Tenement Boundaries

12. *Section 2* is concerned with the boundary features in tenement buildings and restates the common law rules of ownership of parts within a tenement. These rules will apply only where the title deeds to the property or any other enactment do not make different provision.
13. *Subsection (1)* describes the boundary between sectors as the middle of the structure which separates them. If a sector is not adjacent to another sector, it extends to and includes the solum or any structure which is the outer surface of the tenement building; or it extends to the boundary that separates the tenement from another building. “Solum” is defined in *section 29* as the ground on which a building is erected.
14. *Subsection (2)* states that a structure which wholly or mainly serves one sector will be considered as belonging to that sector only. This means that, for example, the front door of a flat leading to the close is part of the flat and not of the close.
15. *Subsections (3)* and *(4)* restate the special rules of the common law in relation to the top and bottom flats in a tenement. The boundary of a top flat extends to include the roof over that flat (*subsection (3)*) while *subsection (4)* provides that the boundary of the bottom flat extends to and includes the solum under that flat. *Subsection (5)* sets out that the boundary of a close extends to and includes the roof over, and the solum under, the close. The “close” includes, under *section 29*, the passage, stairs and landings in a tenement where they provide common access to two or more flats.
16. *Subsection (6)* restates the common law rule that ownership of the airspace above the building goes with ownership of the solum. If a sector of the tenement includes the solum of the building, or a part of it, then that sector will also have within its boundaries the airspace above the building and that directly over the solum (or the part of the solum that is included in the sector). Where, under the titles, the solum is the common property of all of the owners in the tenement, the airspace is likewise common property.
17. *Subsection (6)* is qualified by *subsection (7)*. If the roof of the building slopes, ownership of the triangle of airspace lying between the surface of a sloping roof and an imaginary horizontal plane passing through the highest point of the roof, goes with the ownership of the roof and not with the ownership of the solum. This is important where the top floor flat wishes to build a dormer window into the airspace. Where the title deeds provide that the roof is common property, then the triangle of airspace is also common property.