

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Demolition and Abandonment of Tenement Building

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.