

# TENEMENTS (SCOTLAND) ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Support and Shelter*

#### *Section 8 – Duty to maintain so as to provide support and shelter etc.*

51. This section imposes a positive obligation on an owner of any part of a tenement building to maintain that part so as to ensure that it provides support and shelter (*subsection (1)*). The positive obligation is confined to the “tenement building” itself and does not extend to the solum or to any land which forms part of the tenement (see *section 26*).
52. *Subsection (2)* makes clear that an owner will not be obliged to maintain a part of the building if it would not be reasonable where the building has ceased to be worth repairing. The circumstances to be taken into account include, in particular, the age of the building, its condition and the likely cost of any maintenance. These particular circumstances are also found in *section 5*, when a sheriff is considering an application for the annulment of a scheme decision.
53. Enforcement is dealt with in *subsection (3)*. An owner can enforce the duty under *subsection (1)* if he or she is, or would be, directly affected by breach of the duty. Where a flat is owned in common, any of the owners may enforce this duty under *section 28(5)*.
54. *Subsection (4)* makes it clear that a *pro indiviso* owner of a part of a tenement can maintain that part without the need for the consent of co-owners in order to fulfil the obligation under *section 8(1)*. In other words, where a part of a tenement is owned in common any owner will be able to carry out such work without the consent of the other owners.