

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Insurance

Section 18 – obligation of owner to insure

89. This section imposes an obligation on the owners of all flats within a tenement to insure their flats and any pertinents attached. Under *section 33* there is an exception for the Crown. “Owner” is defined under *section 28* to mean an owner of a flat or a heritable creditor in possession.
90. *Subsection (1)* imposes the basic obligation to insure and specifies that insurance should be for the reinstatement value.
91. Under *subsection (2)*, the obligation to insure as imposed by *subsection (1)* will be met if the insurance cover is provided in whole or in part by a common policy of insurance. This will allow owners to have a combination of common and individual policies of insurance whether or not there was any provision for a common policy in the title deeds.
92. *Subsection (3)* defines the term “prescribed risks” as the risks against which owners are obliged to insure, to be prescribed by Scottish Ministers in subordinate legislation. *Section 32* contains the procedure for subordinate legislation.
93. *Subsection (4)* modifies the obligation to insure in certain circumstances. An owner will not be obliged to insure against a particular risk, if, due to the location of the tenement or other reason an owner, after reasonable efforts, is unable to obtain insurance against a particular risk or the cost of obtaining that insurance is unreasonably high.
94. *Subsection (5)* deals with enforcement. It gives individual owners (this includes *pro indiviso* owners where a flat is owned in common) the right to request from another owner in the tenement evidence of their insurance policy and of recent premium payments. The request must be made in writing. Owners have 14 days to produce the required documents. *Subsection (6)* provides that the duty to insure may be enforced by any other owner in the building.