

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Demolition and Abandonment of Tenement Building

Section 21 – Cost of demolishing tenement building

99. This section explains how costs are to be apportioned when a tenement building is wholly or partially demolished. *Subsection (1)* provides a general rule of equality of contribution. This rule is concerned with the liability of owners amongst themselves and does not import liability in questions with third parties.
100. *Subsection (2)* qualifies the provisions in *subsection (1)* where the floor area of the largest flat in the tenement is more than one and a half times that of the smallest flat. In such instances the costs are apportioned according to floor area. Rules on the determination of the floor area are found in *section 29(2)*.
101. *Subsection (3)* specifies when an owner becomes liable for their share of the cost of demolition. Where an owner agrees to the proposal that the building should be demolished, they become liable for costs from the date of the agreement. In any other case, owners are liable from the date the demolition is instructed. This is particularly important where a flat changes hands while the work is in progress.
102. The rules for apportioning the costs of demolition are adapted under *subsection (4)* for cases of partial demolition. Only owners of the flats in the part demolished are liable for the costs of demolition.
103. This section is concerned with the liability of owners among themselves. It does nothing to disturb the rule, under section 123 of the Housing (Scotland) Act 1987, that a local authority that has carried out the demolition may recover the cost from the owners in such proportions as the owners may agree or, failing agreement, as is determined by arbitration.