



# Tenements (Scotland) Act 2004

## 2004 asp 11

### *Repairs: costs and access*

#### **11 Determination of when an owner's liability for certain costs arises**

- (1) An owner is liable for any relevant costs (other than accumulating relevant costs) arising from a scheme decision from the date when the scheme decision to incur those costs is made.
- (2) For the purposes of subsection (1) above, a scheme decision is, in relation to an owner, taken to be made on—
  - (a) where the decision is made at a meeting, the date of the meeting; or
  - (b) in any other case, the date on which notice of the making of the decision is given to the owner.
- (3) An owner is liable for any relevant costs arising from any emergency work from the date on which the work is instructed.
- (4) An owner is liable for any relevant costs of the kind mentioned in rule 4.1(d) of the Tenement Management Scheme from the date of any statutory notice requiring the carrying out of the work to which those costs relate.
- (5) An owner is liable for any accumulating relevant costs (such as the cost of an insurance premium) on a daily basis.
- (6) Except where subsection (1) above applies in relation to the costs, an owner is liable for any relevant costs arising from work instructed by a manager from the date on which the work is instructed.
- (7) An owner is liable in accordance with section 10 of this Act for any relevant costs arising from maintenance carried out by virtue of section 8 of this Act from the date on which the maintenance is completed.
- (8) An owner is liable for any relevant costs other than those to which subsections (1) to (7) above apply from—
  - (a) such date; or
  - (b) the occurrence of such event,as may be stipulated as the date on, or event in, which the costs become due.

- (9) For the purposes of this section and section 12 of this Act, “relevant costs” means, as respects a flat—
- (a) the share of any costs for which the owner is liable by virtue of the management scheme which applies as respects the tenement (except where that management scheme is the development management scheme); and
  - (b) any costs for which the owner is liable by virtue of this Act.
- (10) In this section, “emergency work”, “manager” and “scheme decision” have the same meanings as they have in the Tenement Management Scheme.

## **12 Liability of owner and successors for certain costs**

- (1) Any owner who is liable for any relevant costs shall not, by virtue only of ceasing to be such an owner, cease to be liable for those costs.
- (2) Subject to subsection (3) below, where a person becomes an owner (any such person being referred to in this section as a “new owner”), that person shall be severally liable with any former owner of the flat for any relevant costs for which the former owner is liable.
- (3) A new owner shall be liable as mentioned in subsection (2) above for relevant costs relating to any maintenance or work (other than local authority work) carried out before the acquisition date only if—
  - (a) notice of the maintenance or work—
    - (i) in, or as near as may be in, the form set out in schedule 2 to this Act; and
    - (ii) containing the information required by the notes for completion set out in that schedule,
 (such a notice being referred to in this section and section 13 of this Act as a “notice of potential liability for costs”) was registered in relation to the new owner’s flat at least 14 days before the acquisition date; and
  - (b) the notice had not expired before the acquisition date.
- (4) In subsection (3) above—
 

“acquisition date” means the date on which the new owner acquired right to the flat; and

“local authority work” means work carried out by a local authority by virtue of any enactment.
- (5) Where a new owner pays any relevant costs for which a former owner of the flat is liable, the new owner may recover the amount so paid from the former owner.
- (6) This section applies as respects any relevant costs for which an owner becomes liable on or after the day on which this section comes into force.

## **13 Notice of potential liability for costs: further provision**

- (1) A notice of potential liability for costs—
  - (a) may be registered in relation to a flat only on the application of—
    - (i) the owner of the flat;
    - (ii) the owner of any other flat in the same tenement; or

- (iii) any manager (within the meaning of the Tenement Management Scheme) of the tenement; and
  - (b) shall not be registered unless it is signed by or on behalf of the applicant.
- (2) A notice of potential liability for costs may be registered—
  - (a) in relation to more than one flat in respect of the same maintenance or work; and
  - (b) in relation to any one flat, in respect of different maintenance or work.
- (3) A notice of potential liability for costs expires at the end of the period of 3 years beginning with the date of its registration, unless the notice is renewed by being registered again before the end of that period.
- (4) This section applies to a renewed notice of potential liability for costs as it applies to any other such notice.
- (5) The Keeper of the Registers of Scotland shall not be required to investigate or determine whether the information contained in any notice of potential liability for costs submitted for registration is accurate.
- (6) The Scottish Ministers may by order amend schedule 2 to this Act.
- (7) In section 12 of the Land Registration (Scotland) Act 1979 (c. 33), in subsection (3) (which specifies losses for which there is no entitlement to be indemnified by the Keeper under that section), after paragraph (p) there shall be added—
  - “(q) the loss arises in consequence of an inaccuracy in any information contained in a notice of potential liability for costs registered in pursuance of—
    - (i) section 10(2A)(a) or 10A(3) of the Title Conditions (Scotland) Act 2003 (asp 9); or
    - (ii) section 12(3)(a) or 13(3) of the Tenements (Scotland) Act 2004 (asp 11).”

#### **14 Former owner’s right to recover costs**

An owner who is entitled, by virtue of the Tenement Management Scheme or any other provision of this Act, to recover any costs or a share of any costs from any other owner shall not, by virtue only of ceasing to be an owner, cease to be entitled to recover those costs or that share.

#### **15 Prescriptive period for costs to which section 12 relates**

In Schedule 1 to the Prescription and Limitation (Scotland) Act 1973 (c. 52) (obligations affected by prescriptive periods of five years to which section 6 of that Act applies)—

- (a) after paragraph 1(ab) there shall be inserted—
  - “(ac) to any obligation to pay a sum of money by way of costs to which section 12 of the Tenements (Scotland) Act 2004 (asp 11) applies;”;
- (b) in paragraph 2(e), for the words “or (ab)” there shall be substituted “, (ab) or (ac)”.

**16 Common property: disapplication of common law right of recovery**

Any rule of law which enables an owner of common property to recover the cost of necessary maintenance from the other owners of the property shall not apply in relation to any common property in a tenement where the maintenance of that property is provided for in the management scheme which applies as respects the tenement.

**17 Access for maintenance and other purposes**

- (1) Where an owner gives reasonable notice to the owner or occupier of any other part of the tenement that access is required to, or through, that part for any of the purposes mentioned in subsection (3) below, the person given notice shall, subject to subsection (5) below, allow access for that purpose.
- (2) Without prejudice to subsection (1) above, where the development management scheme applies, notice under that subsection may be given by any owners' association established by the scheme to the owner or occupier of any part of the tenement.
- (3) The purposes are—
  - (a) carrying out maintenance or other work by virtue of the management scheme which applies as respects the tenement;
  - (b) carrying out maintenance to any part of the tenement owned (whether solely or in common) by the person requiring access;
  - (c) carrying out an inspection to determine whether it is necessary to carry out maintenance;
  - (d) determining whether the owner of the part is fulfilling the duty imposed by section 8(1) of this Act;
  - (e) determining whether the owner or occupier of the part is complying with the prohibition imposed by section 9(1) of this Act;
  - (f) doing anything which the owner giving notice is entitled to do by virtue of section 19(1) of this Act;
  - (g) where floor area is relevant for the purposes of determining any liability of owners, measuring floor area; and
  - (h) where a power of sale order has been granted in relation to the tenement building or its site, doing anything necessary for the purpose of or in connection with any sale in pursuance of the order (other than complying with paragraph 4(3) of schedule 3 to this Act).
- (4) Reasonable notice need not be given as mentioned in subsection (1) above where access is required for the purpose specified in subsection (3)(a) above and the maintenance or other work requires to be carried out urgently.
- (5) An owner or occupier may refuse to allow—
  - (a) access under subsection (1) above; or
  - (b) such access at a particular time,if, having regard to all the circumstances (and, in particular, whether the requirement for access is reasonable), it is reasonable to refuse access.
- (6) Where access is allowed under subsection (1) above for any purpose, such right of access may be exercised by—
  - (a) the owner who or owners' association which gave notice that access was required; or

- (b) such person as the owner or, as the case may be, owners' association may authorise for the purpose (any such person being referred to in this section as an "authorised person").
- (7) Where an authorised person acting in accordance with subsection (6) above is liable by virtue of any enactment or rule of law for damage caused to any part of a tenement, the owner who or owners' association which authorised that person shall be severally liable with the authorised person for the cost of remedying the damage; but an owner or, as the case may be, owners' association making any payment as respects that cost shall have a right of relief against the authorised person.
- (8) Where access is allowed under subsection (1) above for any purpose, the owner who or owners' association which gave notice that access was required (referred to as the "accessing owner or association") shall, so far as reasonably practicable, ensure that the part of the tenement to or through which access is allowed is left substantially in no worse a condition than that which it was in when access was taken.
- (9) If the accessing owner or association fails to comply with the duty in subsection (8) above, the owner of the part to or through which access is allowed may—
  - (a) carry out, or arrange for the carrying out of, such work as is reasonably necessary to restore the part so that it is substantially in no worse a condition than that which it was in when access was taken; and
  - (b) recover from the accessing owner or association any expenses reasonably incurred in doing so.