

# **TENEMENTS (SCOTLAND) ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### *Miscellaneous and General*

#### *Schedule 1 - Tenement Management Scheme*

#### **Rule 5 – redistribution of share of costs**

167. Rule 5 deals with the situation where an owner is unable to pay their share of the costs perhaps because he or she is bankrupt or cannot be contacted or where a scheme decision has been made under rule 3.1(g) that the owner should be exempted from payment. It is not enough to allege that an owner cannot be contacted and it is therefore not possible to get from him or her his or her share of the costs. An effort must be made to identify and locate him or her and that effort must be a reasonable one.
168. In such cases, the relevant share must be paid by the other owners as if it was a scheme cost for which they are liable under rule 4. The “other owners” would only be the owners who were together responsible for the rest of cost of the repairs. This is to cover the situation when one of the flats is sold between the time when the owners become liable for the costs and the time when they discover that one of their number cannot pay. So if one of the flats changes hands, the irrecoverable share will be divided between the owners who are responsible for the costs. Generally this will be the outgoing flat owner.
169. If the share cannot be recovered because the owner is bankrupt or cannot be contacted, then that owner remains liable to all the other owners for the amount paid by each of them.