

Status: Point in time view as at 28/11/2004.

Changes to legislation: There are currently no known outstanding effects for the Tenements (Scotland) Act 2004, RULE 3 –. (See end of Document for details)

SCHEDULE 1 TENEMENT MANAGEMENT SCHEME

RULE 3 –

MATTERS ON WHICH SCHEME DECISIONS MAY BE MADE

Basic scheme decisions

- 3.1 The owners may make a scheme decision on any of the following matters—
- (a) to carry out maintenance to scheme property,
 - (b) to arrange for an inspection of scheme property to determine whether or to what extent it is necessary to carry out maintenance to the property,
 - (c) except where a power conferred by a manager burden (within the meaning of the Title Conditions (Scotland) Act 2003 (asp 9)) is exercisable in relation to the tenement—
 - (i) to appoint on such terms as they may determine a person (who may be an owner or a firm) to manage the tenement,
 - (ii) to dismiss any manager,
 - (d) to delegate to a manager power to exercise such of their powers as they may specify, including, without prejudice to that generality, any power to decide to carry out maintenance and to instruct it,
 - (e) to arrange for the tenement a common policy of insurance complying with section 18 of this Act and against such other risks (if any) as the owners may determine and to determine on an equitable basis the liability of each owner to contribute to the premium,
 - (f) to install a system enabling entry to the tenement to be controlled from each flat,
 - (g) to determine that an owner is not required to pay a share (or some part of a share) of such scheme costs as may be specified by them,
 - (h) to authorise any maintenance of scheme property already carried out,
 - (i) to modify or revoke any scheme decision.

Commencement Information

II Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

Scheme decisions relating to maintenance

- 3.2 If the owners make a scheme decision to carry out maintenance to scheme property or if a manager decides, by virtue of a scheme decision, that maintenance needs to be carried out to scheme property, the owners may make a scheme decision on any of the following matters—
- (a) to appoint on such terms as they may determine a person (who may be an owner or a firm) to manage the carrying out of the maintenance,
 - (b) to instruct or arrange for the carrying out of the maintenance,
 - (c) subject to rule 3.3, to require each owner to deposit—

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- (i) by such date as they may decide (being a date not less than 28 days after the requirement is made of that owner), and
 - (ii) with such person as they may nominate for the purpose,
- a sum of money (being a sum not exceeding that owner’s apportioned share of a reasonable estimate of the cost of the maintenance),
- (d) to take such other steps as are necessary to ensure that the maintenance is carried out to a satisfactory standard and completed in good time.

Commencement Information

II Sch. 1 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(d\)](#)

Scheme decisions under rule 3.2(c) requiring deposits exceeding certain amounts

3.3 A requirement, in pursuance of a scheme decision under rule 3.2(c), that each owner deposit a sum of money—

- (a) exceeding £100, or
- (b) of £100 or less where the aggregate of that sum taken together with any other sum or sums required (otherwise than by a previous notice under this rule) in the preceding 12 months to be deposited by each owner by virtue any scheme decision under rule 3.2(c) exceeds £200,

shall be made by written notice to each owner and shall require the sum to be deposited into such account (the “maintenance account”) as the owners may nominate for the purpose.

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Provision supplementary to rule 3.3

3.4 Where a requirement is, or is to be, made in accordance with rule 3.3—

- (a) the owners may make a scheme decision authorising a manager or at least two other persons (whether or not owners) to operate the maintenance account on behalf of the owners,
- (b) there must be contained in or attached to the notice to be given under rule 3.3 a note comprising a summary of the nature and extent of the maintenance to be carried out together with the following information—
 - (i) the estimated cost of carrying out that maintenance,
 - (ii) why the estimate is considered a reasonable estimate,
 - (iii) how the sum required from the owner in question and the apportionment among the owners have been arrived at,
 - (iv) what the apportioned shares of the other owners are,
 - (v) the date on which the decision to carry out the maintenance was made and the names of those by whom it was made,
 - (vi) a timetable for the carrying out of the maintenance, including the dates by which it is proposed the maintenance will be commenced and completed,

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- (vii) the location and number of the maintenance account, and
- (viii) the names and addresses of the persons who will be authorised to operate that account on behalf of the owners,
- (c) the maintenance account to be nominated under rule 3.3 must be a bank or building society account which is interest bearing, and the authority of at least two persons or of a manager on whom has been conferred the right to give authority, must be required for any payment from it,
- (d) if a modification or revocation under rule 3.1(i) affects the information contained in the notice or the note referred to in paragraph (b) above, the information must be sent again, modified accordingly, to the owners,
- (e) an owner is entitled to inspect, at any reasonable time, any tender received in connection with the maintenance to be carried out,
- (f) the notice to be given under rule 3.3 may specify a date as a refund date for the purposes of paragraph (g)(i) below,
- (g) if—
 - (i) the maintenance is not commenced by—
 - (A) where the notice under rule 3.3 specifies a refund date, that date, or
 - (B) where that notice does not specify such a date, the twenty-eighth day after the proposed date for its commencement as specified in the notice by virtue of paragraph (b)(vi) above, and
 - (ii) a depositor demands, by written notice, from the persons authorised under paragraph (a) above repayment (with accrued interest) of such sum as has been deposited by that person in compliance with the scheme decision under rule 3.2(c),
the depositor is entitled to be repaid accordingly, except that no requirement to make repayment in compliance with a notice under sub-paragraph (ii) arises if the persons so authorised do not receive that notice before the maintenance is commenced,
- (h) such sums as are held in the maintenance account by virtue of rule 3.3 are held in trust for all the depositors, for the purpose of being used by the persons authorised to make payments from the account as payment for the maintenance,
- (i) any sums held in the maintenance account after all sums payable in respect of the maintenance carried out have been paid shall be shared among the depositors—
 - (i) by repaying each depositor, with any accrued interest and after deduction of that person's apportioned share of the actual cost of the maintenance, the sum which the person deposited, or
 - (ii) in such other way as the depositors agree in writing.

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Scheme decisions under rule 3.1(g): votes of persons standing to benefit not to be counted

3.5 A vote in favour of a scheme decision under rule 3.1(g) is not to be counted if—

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- (a) the owner exercising the vote, or
- (b) where the vote is exercised by a person nominated by an owner—
 - (i) that person, or
 - (ii) the owner who nominated that person,is the owner or an owner who, by virtue of the decision, would not be required to pay as mentioned in that rule.

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