



Tenements (Scotland) Act 2004

2004 asp 11

Boundaries and pertinents

1 Determination of boundaries and pertinents

- (1) Except in so far as any different boundaries or pertinents are constituted by virtue of the title to the tenement, or any enactment, the boundaries and pertinents of sectors of a tenement shall be determined in accordance with sections 2 and 3 of this Act.
- (2) In this Act, “title to the tenement” means—
 - (a) any conveyance, or reservation, of property which affects—
 - (i) the tenement; or
 - (ii) any sector in the tenement; and
 - (b) where an interest in—
 - (i) the tenement; or
 - (ii) any sector in the tenement,has been registered in the Land Register of Scotland, the title sheet of that interest.

2 Tenement boundaries

- (1) Subject to subsections (3) to (7) below, the boundary between any two contiguous sectors is the median of the structure that separates them; and a sector—
 - (a) extends in any direction to such a boundary; or
 - (b) if it does not first meet such a boundary—
 - (i) extends to and includes the solum or any structure which is an outer surface of the tenement building; or
 - (ii) extends to the boundary that separates the sector from a contiguous building which is not part of the tenement building.
- (2) For the purposes of subsection (1) above, where the structure separating two contiguous sectors is or includes something (as for example, but without prejudice to the generality of this subsection, a door or window) which wholly or mainly serves only one of those sectors, the thing is in its entire thickness part of that sector.
- (3) A top flat extends to and includes the roof over that flat.

- (4) A bottom flat extends to and includes the solum under that flat.
- (5) A close extends to and includes the roof over, and the solum under, the close.
- (6) Where a sector includes the solum (or any part of it) the sector shall also include, subject to subsection (7) below, the airspace above the tenement building and directly over the solum (or part).
- (7) Where the roof of the tenement building slopes, a sector which includes the roof (or any part of it) shall also include the airspace above the slope of the roof (or part) up to the level of the highest point of the roof.

3 Pertinents

- (1) Subject to subsection (2) below, there shall attach to each of the flats, as a pertinent, a right of common property in (and in the whole of) the following parts of a tenement—
 - (a) a close;
 - (b) a lift by means of which access can be obtained to more than one of the flats.
- (2) If a close or lift does not afford a means of access to a flat then there shall not attach to that flat, as a pertinent, a right of common property in the close or, as the case may be, lift.
- (3) Any land (other than the solum of the tenement building) pertaining to a tenement shall attach as a pertinent to the bottom flat most nearly adjacent to the land (or part of the land); but this subsection shall not apply to any part which constitutes a path, outside stair or other way affording access to any sector other than that flat.
- (4) If a tenement includes any part (such as, for example, a path, outside stair, fire escape, rhone, pipe, flue, conduit, cable, tank or chimney stack) that does not fall within subsection (1) or (3) above and that part—
 - (a) wholly serves one flat, then it shall attach as a pertinent to that flat;
 - (b) serves two or more flats, then there shall attach to each of the flats served, as a pertinent, a right of common property in (and in the whole of) the part.
- (5) For the purposes of this section, references to rights of common property being attached to flats as pertinents are references to there attaching to each flat equal rights of common property; except that where the common property is a chimney stack the share allocated to a flat shall be determined in direct accordance with the ratio which the number of flues serving it in the stack bears to the total number of flues in the stack.