

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Miscellaneous and General

Section 26 – Meaning of “tenement”

116. *Section 26* defines a “tenement” for the purposes of the Act. Most tenement property is residential (though even in those cases there are very commonly shops on the ground floor), but the definition in the Act includes commercial properties such as office blocks. Large houses which have been converted into flats, high rise blocks, “four in a block” and modern blocks of flats will also qualify as tenements, as well as the traditional sandstone or granite buildings of three or four storeys. A tenement is a building comprising two or more related flats which are owned or designed to be owned separately and which are divided horizontally. Generally a building will comprise a single building of related flats. The definition, however, caters for other possible circumstances.
117. As, in terms of *subsection (1)*, a part of a building may be a separate tenement if it comprises related flats, *section 26* excludes those properties which form part of a building but which do contain related flats and which were never intended should form part of a single tenement. These properties are most typically semi-detached houses and terraced houses. Where, for instance, two semi-detached houses are part of the same building, then in the event that one house were to be converted into flats, the definition should not result in the whole building becoming a tenement. There may also be circumstances where two independent management regimes operate within the same building. In effect this means that there are two or more “tenements” rather than one within the same building. This may happen where, for example, there are two or three separate tenement stairs within the same building, perhaps on a corner site. For this reason, *subsection (1)* makes reference to a “building or a part of a building”.
118. The physical features of a building are clearly relevant to deciding the question of whether flats are “related”, but *subsection (2)* provides that regard should also be had to the relevant title deeds and burdens contained therein.