

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Tenement Management Scheme

Section 4 – Application of the Tenement Management Scheme

24. *Section 4* deals with the application of the Tenement Management Scheme which is found in the schedule to the Act. The Tenement Management Scheme contains 9 rules which provide a system of management and maintenance in tenements.
25. The rules of the Tenement Management Scheme will apply only where the tenement burdens, as defined in *section 29(1)*, do not make provision in respect of the subject matter of the individual rules in the Scheme. *Section 4* and the Scheme together provide a default management regime for tenemental property. *Section 4* sets out how each of the rules in the Scheme are to apply.
26. *Subsection (2)* provides that the Scheme will not apply where the development management scheme (defined in *section 29(1)*) as the scheme under section 71 of the Title Conditions Act has been applied to the tenement.
27. Under *subsection (3)* the provisions of rule 1 may, where it is relevant, be used to interpret other provisions of the Scheme.
28. Where the tenement burdens provide a procedure for making decisions and that procedure applies to all flats in the building, then the procedure in the title should be used (under *subsection (4)*). In this case rule 2 would not apply. Where there is no procedure in the tenement burdens or the procedure does not apply to all the flats, then rule 2 of the Tenement Management Scheme will apply.
29. Under *subsection (5)*, rule 3 of the Scheme, which deals with what may be covered by basic scheme decisions and decisions relating to maintenance, will apply where there is no alternative provision made by the tenement burdens.
30. If an owner or owners are not liable for the entire liability (i.e. 100%) of scheme costs under the provisions in the tenement burdens, then rule 4 of the Scheme, which allocates liability and apportionment of costs, will apply under *subsection (6)*. The reference is to “liability” rather than amounts because burdens in title deeds are unlikely to provide for actual amounts and if they did so, the amounts specified would quite quickly bear little relationship to the actual cost of work to scheme property due to cost of living increases. In considering whether the entire liability of a scheme cost has been apportioned among the owners, account is also taken of any liability to be met by someone other than an owner.
31. Rule 5 of the Scheme deals with special cases in relation to scheme costs and *subsection (7)* provides that rule 5 will apply where the burdens in the title deeds do not make equivalent provisions. If, however, the title deeds contain equivalent provisions to those set out in rule 5, they would prevail. Similarly where any provision of the Scheme applies, rules 8 and 9, which deal with the enforcement of scheme

*These notes relate to the Tenements (Scotland) Act 2004
(asp 11) which received Royal Assent on 22 October 2004*

decisions and notification requirements, will apply to supplement the provision (under *subsection (10)*). While the enforcement measures under rule 8 will always apply where a Scheme rule has been applied, the application of rule 9 is subject to any alternative provision in the tenement burdens under *subsection (11)*.

32. *Subsection (8)* makes it clear that rule 6 will ensure that a procedural error will not invalidate any decision made for a tenement unless the title deeds for the tenement provide for how irregularities are to be treated.
33. *Subsection (9)* provides that the provisions in the Scheme for emergency work found in rule 7 will not apply where there is an alternative provision in the tenement burdens. Paragraph (b) makes sure that any existing provision on apportioning liability will not be overridden.
34. Rule 3.3 sets out specific monetary limits which, when exceeded, will require that written notice is made to each owner and that money is deposited into a maintenance account decided upon by the owners. These figures will need to be updated from time to time to take account of inflation. *Subsection (12)* accordingly gives Scottish Ministers the power to substitute new sums by order made by statutory instrument (*section 32*).