

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
BEFORE 0001 HOURS 25 APRIL 2024

DISCUSSION PAPER ON TENEMENT LAW: COMPULSORY OWNERS' ASSOCIATIONS

The Scottish Law Commission today publishes its Discussion Paper consulting on reform of the law of the tenement.

A tenement is any building made up of at least two flats divided from each other horizontally and intended to be in separate ownership. Modern apartment buildings, high flats and converted villas all fall within this definition, along with traditional Victorian sandstone tenements and others. A lack of maintenance and improvement works to the fabric of these buildings over the years has left many tenements in a state of disrepair.

In March 2018 a Scottish Parliament Working Group was convened to explore what actions could be taken to improve the condition of Scotland's tenements. The Working Group made a number of recommendations for changes in legislation and practice, one of which was that every tenement building should have an owners' association to coordinate work to the building. The owners of all the flats in the building would be members of the owners' association, which would have legal personality and be able to enter contracts in its own name.

The Scottish Law Commission's project follows from a reference under the Law Commissions Act 1965 received on 10 January 2022 from the (then) Cabinet Secretary for Social Justice, Housing and Local Government (Shona Robison MSP). The reference asks us to make recommendations to implement the Working Group's recommendation that all tenements should have an owners' association.

The Discussion Paper considers in detail:

- The functions, powers and duties of the owners' association, including the role of an association manager.
- How decisions to exercise the powers of the owners' association will be made by members, as well as how these decisions can be challenged.
- The liability of owners for costs, and the implementation of an annual budgeting system.

- Whether the court should be empowered to appoint a manager to run the owners' association where owners have failed to keep it operational.
- Whether any types of tenements should be exempt from the scheme, and how the scheme could be disapplied from a tenement.
- How any new laws made to give effect to the scheme will interact with pre-existing title conditions.

We seek views from consultees on 79 questions, including:

- What powers should be available to the owners' association?
- Can the members of the owners' association generally make decisions by way of a majority vote? Which types of decision will require a higher voting threshold?
- In what circumstances can an owner challenge a majority decision?
- What works should be covered in the annual budget for the association, and what action can be taken against an owner who does not pay their share?
- Who is eligible to act as the manager of an owners' association?
- Should tenement disputes be heard by a tribunal rather than in a court?

The Commission is very keen to hear from everyone with an interest in the issues raised in the Discussion Paper. Comments can be made until 1 August 2024, and will help shape the recommendations to be made in our final Report. We welcome replies to any or all of the questions posed in the paper.

Professor Frankie McCarthy, the lead Commissioner, said:

“The statistics on the state of disrepair of Scotland’s tenement housing stock are jarring. Those statistics underpin the recommendations of the Working Group on Tenement Maintenance, one of which was to establish owners’ associations in all of Scotland’s tenement buildings. The Discussion Paper we have now published sets out our provisional proposals for reform in order to meet that overarching aim and in a way which aligns with the more detailed considerations of the Working Group as set out in its interim and final reports. The introduction of owners’ associations will represent a significant change for flat owners, and while it will not be a standalone solution to the difficulties encountered with the management of multi-owner buildings, we hope that it will be a positive addition to the effort to improve the condition of this vital element in Scotland’s housing stock. We would encourage anyone with an interest in this subject to respond to the proposals and questions set out in the paper.”

FURTHER INFORMATION SECTION

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chair is the Rt Hon Lady Paton, a Court of Session judge. The other Commissioners are David Bartos, Professor Gillian Black, and Professor Frankie McCarthy. The Interim Chief Executive is Charles Garland.

2. Further information can be obtained by contacting Stephen Crilly, Scottish Law Commission, Parliament House, 11 Parliament Square, Edinburgh EH1 1RQ (Tel: 0131 244 6605; email info@scotlawcom.gov.uk).

3. The paper will be available on our website at <https://www.scotlawcom.gov.uk> as early as possible on 25 April 2024.