

# REPORT ON TENEMENT LAW: COMPULSORY OWNERS' ASSOCIATIONS

## EXECUTIVE SUMMARY

### Introduction

1. The Scottish Law Commission has published its Report on Tenement law: compulsory owners' associations (Scot Law Com No. 270, 2025) ("the Report").

### Background to the Scottish Law Commission's Project and Report

2. A tenement is any building made up of flats or otherwise divided horizontally into sections. This definition includes traditional Victorian tenements, modern apartment buildings, high flats and larger properties converted into flats, amongst other things. Tenements may include a mixture of residential and commercial units.
3. The condition of Scotland's tenements has been in decline for many years. In March 2018, a Scottish Parliament Working Group was convened to explore ways in which legal, technical and cultural barriers to tenement maintenance could be overcome.<sup>1</sup>
4. In June 2019, the Group published its Final Recommendations Report. The Report contained three interconnected recommendations:
  - Recommendation 1: Tenement buildings should be subject to a building condition inspection every five years.
  - Recommendation 2: An owners' association should be established for every tenement building.
  - Recommendation 3: A building reserve fund should be established for every tenement building.
5. On 10th January 2022, the Scottish Law Commission received a reference from the (then) Cabinet Secretary for Social Justice, Housing and Local Government.<sup>2</sup> The reference asked us:

"To review the law of the tenement in Scotland, including the Tenements (Scotland) Act 2004, and make recommendations for reform to implement recommendation 2 (establishing compulsory owners' associations) ..."
6. The essence of recommendation 2 is that the owner of every tenement flat in Scotland should be required to enter into an association with the owners of the other flats in the same building. The key purpose of the association would be to manage maintenance and repair of the building fabric, and the association would have legal personality separate from the flat owners, enabling it to contract for maintenance work and hold funds in its own name. Our Report and draft Bill set out an appropriate legislative basis

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<sup>1</sup> Working Group on the Maintenance of Tenement Scheme Property, *Final Recommendations Report* (2019), available at [https://www.scotlawcom.gov.uk/index.php/download\\_file/view/2306/1687/](https://www.scotlawcom.gov.uk/index.php/download_file/view/2306/1687/).

<sup>2</sup> This is a reference under section 3(1)(e) of the Law Commissions Act 1965. A copy of the reference letter is available at: [https://www.scotlawcom.gov.uk/index.php/download\\_file/view/2305/1687/](https://www.scotlawcom.gov.uk/index.php/download_file/view/2305/1687/).

for implementing this recommendation should the Scottish Government be minded to progress it.

## **Implementing the Working Group's recommendation – the Report**

### *Chapter 1 - Introduction*

7. Our work in this area forms one strand of a larger programme of housing law and policy reform being taken forward by the Scottish Government. In Chapter 1 of our Report we set out an overview of that policy background, alongside a history of the work of the project, a summary of our Business and Regulatory Impact Assessment and a discussion of legislative competence matters.

### *Chapter 2 - Consultees' views – the broader context*

8. Between April and August 2024, we conducted a public consultation on initial proposals for reform which were set out in our Discussion Paper on Tenement law: compulsory owners associations.<sup>3</sup> During that process, consultees often commented on aspects of housing law and policy which were beyond the scope of our project. Although we did not make recommendations on these points, we recognised that these broader contextual issues were important and so we summarise them in this Chapter. These points include, for example, whether options for tenement management and maintenance beyond compulsory owners' associations should be explored, and the extent to which support, financial and otherwise, should be given to owners, local authorities and others if owners' associations are to be established.

### *Chapter 3 – A new framework for tenement maintenance*

9. This Chapter provides an overview of the new legal framework for tenement maintenance that will be put into place should our draft Bill be enacted. It summarises key changes to the Tenements (Scotland) Act 2004 and sets out the central features of the owners' association legislation in the draft Bill. We also discuss definitions of key terms such as "association property" and "maintenance".

### *Chapter 4 – The owners' association*

10. In Chapter 4 we consider how owners' associations will be created for each tenement. We make recommendations as to the extent and limitations of an owners' association's powers to take action – its legal capacity. We consider which insolvency procedure should be available to an association. We also discuss the process by which an association can be dissolved and its affairs wound up in circumstances where a tenement ceases to exist.

### *Chapter 5 – Managers and members*

11. In Chapter 5 we consider who will control an owners' association. Our proposed scheme tasks a manager with the day-to-day running of the association. The manager will usually be the person exercising the powers of the association on its behalf, generally as directed by the association members and subject to certain duties. Managers need not necessarily be professional property managers (factors), but could be an owner of a flat in the tenement. The members of the association – the owners of flats in the tenement –

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<sup>3</sup> Scottish Law Commission, Discussion Paper on Tenement law: compulsory owners' associations (Scot Law Com DP No 176, 2024), available at [https://www.scotlawcom.gov.uk/files/9417/1388/6160/Discussion\\_Paper\\_-\\_Tenement\\_law\\_compulsory\\_owners\\_associations\\_-\\_No\\_176.pdf](https://www.scotlawcom.gov.uk/files/9417/1388/6160/Discussion_Paper_-_Tenement_law_compulsory_owners_associations_-_No_176.pdf).

will have power to decide when and how the association should take action. They will take on liability for costs incurred by the association as a result.

### *Chapter 6 – Key duties*

12. In Chapter 6 we recommend that owners' associations should be subject to four key duties. These duties are intended to ensure that the association functions at a basic level. The four key duties are: to appoint a manager for the association; to hold annual meetings of members; to approve a budget in respect of association costs for each financial year; and to apply to have certain information noted on the property registers in respect of the tenement.<sup>4</sup>

### *Chapter 7 – Remedial manager appointment orders*

13. While it is hoped that most associations will comply with the key duties, in Chapter 7 we consider what steps should be taken where that is not the case. In those circumstances, we recommend that the appropriate enforcement mechanism is an order appointing a remedial manager. The role of the remedial manager will be to bring the owners' association into compliance with the key duties. Under our recommendations, any person with a relevant interest may apply to the Housing and Property Chamber of the First-tier Tribunal for an order to appoint a remedial manager to the association and to terminate any existing managerial appointment.

### *Chapter 8 – Association rules and association conditions*

14. In Chapter 8 we consider the rules by which the owners' association should operate. We recommend a default set of rules. These include, for example, provision about allocation of votes amongst members and the voting thresholds required for certain actions, rules on the running of association meetings and provision on the content and approval of the annual budget. These default rules can be disapplied where alternative provision on relevant matters is instead made by way of real burdens in the tenement titles. However, such burdens will disapply the default rules only where they comply with new statutory requirements.
15. We recommend that, for a transitional period of 20 years, existing title conditions on specified matters should regulate the operation of the association, with the default rules only applying where the title conditions are silent or incomplete. Once the transitional period has ended, those title conditions which are contrary to the default rules will cease to have effect, and will be supplanted by the default rules. The only exception to this is where members agree and implement alternative rules to govern their association in accordance with the process set out in the Bill. Over the course of time the rules applicable to associations will become more standardised and therefore more widely understood and accessible.

### *Chapter 9 – Default association rules – decisions*

16. In this Chapter we make detailed recommendations for the default rules on how an owners' association will make decisions. This covers, for example, the allocation of votes among members, voting thresholds and the formalities of holding meetings.

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<sup>4</sup> Tenements which have two or three flats, and tenements in which all the flats are owned by a single owner, are not required to comply with all of these duties.

*Chapter 10 – Default association rules – liability for costs and financial administration*

17. In this Chapter we make detailed recommendations about the default rules on the liability of members for costs incurred by the association. We also make recommendations on other elements of financial administration, including details of what the annual budget should contain. Our recommendation is that the annual budget should set out the estimated costs to be incurred by the association in the coming year, including the reasons for those costs and a timeline for planned maintenance work. The budget will also set out what each owner's share of the relevant costs will be, with that share to be paid by each owner by way of a service charge mechanism.

*Chapter 11 – Enforcement of maintenance obligations*

18. In this Chapter we examine the processes and mechanisms by which certain tenement maintenance obligations can be enforced. We consider the obligations owed by flat owners to one another and we recommend that the manager should have the power to enforce any duty owed to the association by a member. We also recommend two new remedies which should be available to the association in relation to the obligations owed by owners: budget approval orders and tenement-specific land attachment.

*Chapter 12 – Summary of recommendations*

19. Chapter 12 contains a summary of the recommendations made in the earlier chapters of the Report.

11 December 2025