

Tenements (Scotland) Act 2004

[KEELING SCHEDULE]

This is a version of the Tenements (Scotland) Act 2004 showing the changes which would be made by the draft Tenements (Amendment) (Scotland) Bill. While every effort has been made to ensure its accuracy, its contents are not guaranteed.

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—
 - (i) the tenement; or
 - (ii) any sector in the tenement,has been registered in the Land Register of Scotland, the relevant title sheet.

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.

Tenement owners' associations

3A Establishment of tenement owners' associations

- (1) A tenement owners' association is established for a tenement in accordance with this section.
- (2) An association is established for a tenement—
 - (a) where the tenement exists on the day on which section 1 of the Tenements (Amendment) (Scotland) Act 2025 comes into force, on that day,
 - (b) where the tenement comes into existence after that section comes into force, on the day on which the tenement comes into existence,unless, on the day mentioned in paragraph (a) or (as the case may be) (b), the development management scheme applies to the tenement.

- (3) Where the development management scheme ceases to apply to a tenement by virtue of section 73(1) of the Title Conditions (Scotland) Act 2003, an association is established for the tenement on the day on which the scheme ceases to apply to the tenement.
- (4) Schedule A1 makes further provision about tenement owners' associations.

3B Winding up and dissolution of association

- (1) A tenement owners' association for a tenement must be wound up if—
 - (a) the development management scheme takes effect in relation to the tenement by virtue of section 71(1) of the Title Conditions (Scotland) Act 2003, or
 - (b) the tenement ceases to be a tenement.
- (2) The winding up period is—
 - (a) the period of 6 months beginning with the day on which the event mentioned in subsection (1)(a) or (b) occurs, or
 - (b) such longer period beginning with that day as the association may determine.
- (3) During the winding up period—
 - (a) the association—
 - (i) no longer has the function and powers mentioned in paragraph 4 of schedule A1, but
 - (ii) has the power to do anything which is necessary to wind up the association,
 - (b) paragraphs 8(1)(b), (c) and (d), 10, 11 and 20(c) of schedule A1 do not apply in relation to the association.
- (4) The manager of the association must begin winding up the association as soon as practicable after the winding up period begins.
- (5) During the winding up period, the manager must, in particular—
 - (a) pay any debts due by the association out of the funds of the association,
 - (b) after doing so, distribute any remaining funds amongst the owners in the proportions in which the owners contributed to the funds,
 - (c) prepare the association's final accounts,
 - (d) give each member of the association a copy of those accounts,
 - (e) where tenement owners' association conditions which affect the tenement are registered against land in the Land Register of Scotland, notify the Keeper of the Registers of Scotland that the Register will become inaccurate as regards those conditions when the association is dissolved.
- (6) The final accounts must set out how the association has been wound up, including how any remaining funds were distributed.
- (7) The association is dissolved at the end of the winding up period.
- (8) Subject to any association decision, any rights or liabilities of the association subsisting immediately before it is dissolved are, when the association is dissolved—
 - (a) transferred to the owners, and
 - (b) shared amongst the owners in equal proportions.

- (9) Where the tenement ceases to be a tenement, the members of the association during the winding up period are the persons who were its members immediately before the winding up period began.
- (10) For the purposes of subsection (2), where a tenement ceases to be a tenement, the day on which that event is taken to occur is—
 - (a) the day on which a completion certificate is accepted under section 18 of the Building (Scotland) Act 2003 in respect of the work to, or conversion of, the tenement building which has resulted in the tenement ceasing to exist, or
 - (b) such other day as may be determined by the First-tier Tribunal for Scotland on an application under section 3C.

3C Application to First-tier Tribunal to determine certain dates

A person with an interest in a tenement owners' association for a tenement may apply to the First-tier Tribunal for Scotland for an order determining any of the following—

- (a) the date on which—
 - (i) the tenement came into existence,
 - (ii) the tenement ceased to be a tenement,
 - (iii) the association was established,
 - (iv) the association was dissolved,
- (b) whether, on a particular date—
 - (i) the tenement existed,
 - (ii) the association existed.

Operation of tenement owners' associations

3D Tenement owners' association rules

- (1) The rules of a tenement owners' association for a tenement are—
 - (a) the rules set out in tenement owners' association conditions ("association conditions") which affect the tenement, or
 - (b) where there are no such conditions, the default association rules set out in schedule A2.
- (2) "Tenement owners' association conditions" are real burdens—
 - (a) to which each flat in the tenement is subject,
 - (b) which are contained in one constitutive deed, and
 - (c) which replicate the default association rules in force when the burdens are created—
 - (i) with the substitution of any reference in the rules to "this Act" with a reference to "the Tenements (Scotland) Act 2004",
 - (ii) otherwise, with no modifications or only with modifications which are permitted by regulations made by the Scottish Ministers.
- (3) Where real burdens which are association conditions are varied, the reference in subsection (2)(c) to the default association rules in force when the real burdens are

created is to be read, in relation to any provision of the real burdens which is varied, as a reference to the default association rules in force when the burdens are varied.

- (4) A difference between real burdens and the default association rules (other than a difference mentioned in subsection (2)(c)(i) or (ii)) does not prevent the real burdens being association conditions unless the difference—

 - (a) causes the real burdens to have a different effect than they would have without the difference, or
 - (b) is misleading.
- (5) The validity of anything done in good faith in accordance with a real burden which purports to be an association condition is not affected by its not being an association condition.
- (6) The default association rules are to be construed as if they were real burdens (see section 14 of the Title Conditions (Scotland) Act 2003).
- (7) In this section, “constitutive deed” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003.
- (8) Schedule A3 makes provision about the application of the default association rules during the transition period.

3E Tenement owners’ association conditions: further provision

- (1) A deed of discharge granted in relation to a real burden which is one of a number of real burdens constituting the tenement owners’ association conditions affecting a tenement is of no effect unless it discharges all of the real burdens which constitute those conditions.
- (2) When a tenement owners’ association for a tenement is dissolved, any association conditions which affect the tenement are extinguished.
- (3) Sections 90 (powers of Lands Tribunal as respects title conditions) and 91 (special provision as to variation or discharge of community burdens) of the Title Conditions (Scotland) Act 2003 do not apply in relation to real burdens which are association conditions.

3F Application to First-tier tribunal for appointment of remedial manager to tenement owners’ association

- (1) A person who has an interest in the management of a tenement by a tenement owners’ association may apply to the First-tier Tribunal for Scotland for an order—

 - (a) removing the manager (if any) of the association, and
 - (b) appointing a remedial manager to the association.
- (2) The Tribunal may make an order under subsection (1) if satisfied that—

 - (a) the association is in breach of a duty under paragraph 8(1) of schedule A1, and
 - (b) it is reasonable in all the circumstances to make the order.
- (3) The Tribunal may appoint as the remedial manager—

 - (a) a person mentioned in subsection (4), or
 - (b) if satisfied that there is no such person, the local authority for the area in which the tenement is situated.

- (4) A person referred to in subsection (3) is a person who—
 - (a) is—
 - (i) a member of the association, or
 - (ii) a registered property factor, and
 - (b) has agreed to be appointed as remedial manager on terms which the Tribunal is satisfied are reasonable in all the circumstances.
- (5) The local authority for the area in which the tenement building is situated must make an application for an order under subsection (1) if the authority considers that—
 - (a) the association is in breach of a duty under paragraph 8(1) of schedule A1,
 - (b) no other person has made, or is likely to make, an application for the order, and
 - (c) it is reasonable in all the circumstances to make the application.
- (6) An application for an order under subsection (1) must—
 - (a) specify any duty under paragraph 8(1) of schedule A1 of which the applicant considers the association to be in breach, and
 - (b) either—
 - (i) specify a person mentioned in subsection (4) whom the applicant proposes be appointed as the remedial manager, the terms on which it is proposed the person be appointed and that the person is content to be appointed on those terms, or
 - (ii) state that the applicant has not obtained the agreement of a person mentioned in subsection (4) to be appointed as the remedial manager.
- (7) Where the application includes a statement under subsection (6)(b)(ii), it must be accompanied by evidence that the applicant has attempted to obtain the agreement of a person mentioned in subsection (4) to be appointed as the remedial manager.
- (8) The appointment of a remedial manager comes to an end when—
 - (a) the association appoints a manager under paragraph 9 of schedule A1,
 - (b) a new remedial manager is appointed under subsection (1), or
 - (c) where the remedial manager is not a local authority appointed under subsection (3)(b)—
 - (i) the remedial manager ceases to be a member of the association or a registered property factor, or
 - (ii) the appointment ends under the terms of the appointment.
- (9) Where a local authority makes an application under subsection (1), the authority may recover the costs of making the application from the association.
- (10) In this section, “registered property factor” is to be construed in accordance with section 31 (interpretation) of the Property Factors (Scotland) Act 2011.

3G Remedial managers: functions

- (1) A remedial manager of a tenement owners' association—
 - (a) may do anything that a manager appointed under paragraph 9 of schedule A1 may do so far as is necessary for the association to comply with its duties under paragraph 8(1) of that schedule.
 - (b) does not otherwise have any of the functions of a manager appointed under that paragraph.
- (2) Subsections (3) and (4) apply where a local authority is appointed as a remedial manager under section 3F(3)(b).
- (3) The authority may appoint a person to exercise the remedial manager's functions on its behalf (but, where it does so, remains responsible for the exercise of those functions).
- (4) The authority may recover from the association—
 - (a) a fee for acting as the remedial manager.
 - (b) costs incurred by the authority in so acting.
- (5) The Scottish Ministers may by regulations make provision about—
 - (a) the amount of the fee which may be recovered under subsection (4)(a).
 - (b) the costs which may be recovered under subsection (4)(b).
- (6) Regulations under subsection (5) may—
 - (a) include transitional, transitory or saving provision.
 - (b) make different provision for different purposes.

4A Power of local authority to pay share of ~~scheme~~association costs

- (1) The local authority for the area in which a tenement is situated may pay a sum representing an owner's share of ~~scheme~~association costs if that owner—
 - (a) is unable or unwilling to do so, or
 - (b) cannot, by reasonable inquiry, be identified or found.
- (2) But a local authority may not pay a sum representing an owner's share of ~~scheme costs which are attributable to a scheme decision mentioned in rule 3.1(e) of the Tenement Management Scheme~~association costs incurred in relation to a common policy of insurance for the tenement.
- (3) For the purposes of this section an owner's share of any ~~scheme costs is to be determined in accordance with~~association costs is the share of those costs for which the owner is liable in accordance with the tenement owners' association's rules.—
 - (a) ~~the Tenement Management Scheme as it applies to the owner's tenement, or~~
 - (b) ~~where a tenement burden provides that the entire liability for those scheme costs (in so far as liability for those costs is not to be met by someone other than an owner) is to be met by one or more of the owners, that burden.~~
- (4) Before making a payment under this section, the local authority must give notice to the owner who has failed to pay a share of any ~~scheme~~association costs.

- (5) The local authority may recover from the owner who failed to pay a share of any ~~scheme~~[association](#) costs any—
 - (a) payments made under this section, and
 - (b) administrative expenses incurred by it in connection with the making of the payment.
- (6) This section is without prejudice to any entitlement to recover sums in accordance with section 11 or 12.

Tenement Management Scheme

~~4 Application of the Tenement Management Scheme~~

- ~~(1) The Tenement Management Scheme (referred to in this section as “the Scheme”), which is set out in schedule 1 to this Act, shall apply in relation to a tenement to the extent provided by the following provisions of this section.~~
- ~~(2) The Scheme shall not apply in any period during which the development management scheme applies to the tenement by virtue of section 71 of the Title Conditions (Scotland) Act 2003 (asp 9).~~
- ~~(3) The provisions of rule 1 of the Scheme shall apply, so far as relevant, for the purpose of interpreting any other provision of the Scheme which applies to the tenement.~~
- ~~(4) Rule 2 of the Scheme shall apply unless—~~
 - ~~(a) a tenement burden provides procedures for the making of decisions by the owners; and~~
 - ~~(b) the same such procedures apply as respects each flat.~~
- ~~(5) The provisions of rule 3 of the Scheme shall apply to the extent that there is no tenement burden enabling the owners to make scheme decisions on any matter on which a scheme decision may be made by them under that rule.~~
- ~~(6) Rule 4 of the Scheme shall apply in relation to any scheme costs incurred in relation to any part of the tenement unless a tenement burden provides that the entire liability for those scheme costs (in so far as liability for those costs is not to be met by someone other than an owner) is to be met by one or more of the owners.~~
- ~~(7) The provisions of rule 5 of the Scheme shall apply to the extent that there is no tenement burden making provision as to the liability of the owners in the circumstances covered by the provisions of that rule.~~
- ~~(8) The provisions of rule 6 of the Scheme shall apply to the extent that there is no tenement burden making provision as to the effect of any procedural irregularity in the making of a scheme decision on—~~
 - ~~(a) the validity of the decision; or~~
 - ~~(b) the liability of any owner affected by the decision.~~
- ~~(9) Rule 7 of the Scheme shall apply to the extent that there is no tenement burden making provision—~~
 - ~~(a) for an owner to instruct or carry out any emergency work as defined in that rule; or~~
 - ~~(b) as to the liability of the owners for the cost of any emergency work as so defined.~~

- (10) ~~The provisions of—~~
 (a) ~~rule 8; and~~
 (b) ~~subject to subsection (11) below, rule 9;~~
 of the Scheme shall apply, so far as relevant, for the purpose of supplementing any other provision of the Scheme which applies to the tenement.
- (11) ~~The provisions of rule 9 are subject to any different provision in any tenement burden.~~
- (12) ~~The Scottish Ministers may by order substitute for the sums for the time being specified in rule 3.3 of the Scheme such other sums as appear to them to be justified by a change in the value of money appearing to them to have occurred since the last occasion on which the sums were fixed.~~
- (13) ~~Where some but not all of the provisions of the Scheme apply, references in the Scheme to “the scheme” shall be read as references only to those provisions of the Scheme which apply.~~
- (14) ~~In this section and section 4A, “scheme costs” and “scheme decision” have the same meanings as they have in the Scheme.~~

Resolution of disputes

5 Application to ~~sheriff~~First-tier Tribunal for annulment of certain decisions

- (1) Where a decision is made by ~~the owners in accordance with the management scheme which applies as respects the tenement (except where that management scheme is the development management scheme)~~a tenement owners’ association for a tenement in accordance with the association’s rules, an owner mentioned in subsection (2) below may, ~~by summary application, apply to the sheriff~~ apply to the First-tier Tribunal for Scotland for an order annulling the decision.
- (2) That owner is—
- any owner who, at the time the decision referred to in subsection (1) above was made, was not in favour of the decision; or
 - any new owner, that is to say, any person who was not an owner at that time but who has since become an owner.
- (3) For the purposes of any such application, the defender shall be ~~all the other owners~~the tenement owners’ association.
- (4) An application under subsection (1) above shall be made—
- in a case where the decision was made at a meeting attended by the owner making the application, not later than 28 days after the date of that meeting; or
 - in any other case, not later than 28 days after the date on which notice of the making of the decision was given to the owner for the time being of the flat in question.
- (5) The ~~sheriff~~Tribunal may, if satisfied that the decision—
- is not in the best interests of all (or both) the owners of flats in the tenement taken as a group; or
 - is unfairly prejudicial to one or more of the owners,
- make an order annulling the decision (in whole or in part).

- (6) Where such an application is made as respects a decision to carry out maintenance, improvements or alterations, the ~~sheriff~~Tribunal shall, in considering whether to make an order under subsection (5) above, have regard to—
 - (a) the age of the property which is to be maintained, improved or, as the case may be, altered;
 - (b) its condition;
 - (c) the likely cost of any such maintenance, improvements or alterations; and
 - (d) the reasonableness of that cost.
- (7) Where the ~~sheriff~~Tribunal makes an order under subsection (5) above annulling a decision (in whole or in part), the ~~sheriff~~Tribunal may make such other, consequential, order as the ~~sheriff~~Tribunal thinks fit (as, for example, an order as respects the liability of ~~owners~~an owner or the association for any costs already incurred).
- (8) ~~...A party may not later than fourteen days after the date of—~~
 - ~~(a) an order under subsection (5) above; or~~
 - ~~(b) an interlocutor dismissing such an application;~~~~appeal to the Court of Session on a point of law.~~
- (9) ~~...A decision of the Court of Session on an appeal under subsection (8) above shall be final.~~
- (10) Where an owner is entitled to make an application under subsection (1) above in relation to any decision, no step shall be taken to implement that decision unless—
 - (a) the period specified in subsection (4) above within which such an application is to be made has expired without such an application having been made and notified to the ~~owners~~association; or
 - (b) where such an application has been so made and notified—
 - (i) the application has been disposed of and either the period ~~specified in subsection (8) above within which an appeal against the sheriff's decision may be made for making an appeal against the Tribunal's decision~~ has expired without such an appeal having been made or such an appeal has been made and disposed of; or
 - (ii) the application has been abandoned.
- (11) Subsection (10) above does not apply to a decision relating to work which requires to be carried out urgently.

6 Application to ~~sheriff~~First-tier Tribunal for order resolving certain disputes

- (1) ~~Any owner~~A tenement owners' association for a tenement or an owner may ~~by summary application apply to the sheriff~~apply to the First-tier Tribunal for Scotland for an order relating to any matter concerning the operation of—
 - (a) ~~the management scheme which applies as respects the tenement (except where that management scheme is the development management scheme);~~the tenement owners' association or the association's rules, or
 - (b) any provision of this Act in its application as respects the tenement.

- (2) Where an application is made under subsection (1) above the ~~sheriff~~Tribunal may, subject to such conditions (if any) as the ~~sheriff~~Tribunal thinks fit—
 - (a) grant the order ~~craved~~; or
 - (b) make such other order under this section as the ~~sheriff~~Tribunal considers necessary or expedient.
- (3) ~~...A party may not later than fourteen days after the date of—~~
 - (a) ~~an order under subsection (2) above; or~~
 - (b) ~~an interlocutor dismissing such an application;~~~~appeal to the Court of Session on a point of law.~~
- (4) ~~...A decision of the Court of Session on an appeal under subsection (3) above shall be final.~~
- (5) The Tribunal may make any order under subsection (2)(b) that it would be competent for the Tribunal to make if proceedings under this section were civil proceedings.

6A Application to First-tier Tribunal for approval of association budget

- (1) The manager of a tenement owners' association for a tenement may apply to the First-tier Tribunal for Scotland to approve a budget for the association for a financial year.
- (2) The manager may make an application under subsection (1) only if—
 - (a) the manager has attempted to obtain the approval of the association for a budget for that year in accordance with the association's rules, and
 - (b) the association has not approved a budget.
- (3) An application under subsection (1) must include the budget to be approved.
- (4) The manager must notify the members of the association of an application made under subsection (1).
- (5) The Tribunal may approve the budget only if the Tribunal is satisfied that—
 - (a) the budget includes only costs which relate to—
 - (i) work required in order for the owners of flats in the tenement to comply with section 8, or
 - (ii) the running of the association (including the cost of making an application under subsection (1)), and
 - (b) it is reasonable to do so in the circumstances.

Support and shelter

7 Abolition as respects tenements of common law rules of common interest

Any rule of law relating to common interest shall, to the extent that it applies as respects a tenement, cease to have effect; but nothing in this section shall affect the operation of any such rule of law in its application to a question affecting both a tenement and—

- (a) some other building or former building (whether or not a tenement); or
- (b) any land not pertaining to the tenement.

8 Duty to maintain so as to provide support and shelter etc.

- (1) ~~Subject to subsection (2) below, the owner of any part of a tenement building, being a part that provides, or is intended to provide, support or shelter to any other part, shall maintain the supporting or sheltering part so as to ensure that it provides support or shelter.~~The owner of any part of a tenement building must maintain that part—
- (a) if that part provides, or is intended to provide, support or shelter to any other part, so as to ensure that it provides support or shelter,
 - (b) so as to prevent damage to any part of the tenement,
 - (c) in the interests of health and safety.
- (2) An owner shall not by virtue of subsection (1) above be obliged to maintain any part of a tenement building if it would not be reasonable to do so, having regard to all the circumstances (and including, in particular, the age of the tenement building, its condition and the likely cost of any maintenance).
- (3) ~~The duty imposed by subsection (1) above on an owner of a part of a tenement building may be enforced by any other such owner who is, or would be, directly affected by any breach of the duty.~~The duty imposed by subsection (1) above on an owner of a part of a tenement building may be enforced—
- (a) by any other such owner who is, or would be, directly affected by any breach of the duty, or
 - (b) insofar as the duty relates to association property, by the tenement owners' association.
- (4) Where two or more persons own any such part of a tenement building as is referred to in subsection (1) above in common, any of them may, without the need for the agreement of the others, do anything that is necessary for the purpose of complying with the duty imposed by that subsection.

9 Prohibition on interference with support or shelter etc.

- (1) No owner or occupier of any part of a tenement shall be entitled to do anything in relation to that part which would, or would be reasonably likely to, impair to a material extent—
- (a) the support or shelter provided to any part of the tenement building; or
 - (b) the natural light enjoyed by any part of the tenement building.
- (2) ~~The prohibition imposed by subsection (1) above on an owner or occupier of a part of a tenement may be enforced by any other such owner who is, or would be, directly affected by any breach of the prohibition.~~The prohibition imposed by subsection (1) above on an owner or occupier of a part of a tenement may be enforced—
- (a) by any other such owner who is, or would be, directly affected by any breach of the prohibition, or
 - (b) insofar as the prohibition relates to association property, by the tenement owners' association.

10 Recovery of costs incurred by virtue of section 8

- (1) Where—
- (a) by virtue of section 8 of this Act an owner carries out maintenance to any part of a tenement to which the development management scheme applies; and
 - (b) ~~the management scheme which~~that scheme as it applies as respects the tenement provides for the maintenance of that part,
- the owner shall be entitled to recover from any other owner any share of the cost of the maintenance for which that other owner would have been liable had the maintenance been carried out by virtue of the ~~management scheme in question~~development management scheme.
- (2) Where in any other case an owner carries out maintenance by virtue of section 8 to any part of a tenement which is association property, the owner is entitled to recover from the tenement owners' association the costs of the maintenance carried out to the association property.

*Repairs: costs and access***11 Determination of when an owner's liability for certain costs arises**

- (1) An owner is liable for any relevant costs (other than accumulating relevant costs) arising from ~~a scheme~~an association decision from the date when the ~~scheme~~association decision to incur those costs is made.
- (2) For the purposes of subsection (1) above, ~~a scheme~~an association decision is, in relation to an owner, taken to be made on—
 - (a) where the decision is made at a meeting, the date of the meeting; or
 - (b) in any other case, the date on which notice of the making of the decision is given to the owner.
- (3) An owner is liable for any relevant costs arising from any emergency work from the date on which the work is instructed.
- (4) An owner is liable for any relevant costs ~~of the kind mentioned in rule 4.1(d) of the Tenement Management Scheme~~recoverable by a local authority in respect of work relating to any association property carried out by the authority by virtue of any enactment from the date of any statutory notice requiring the carrying out of the work to which those costs relate.
- (5) An owner is liable for any accumulating relevant costs (such as the cost of an insurance premium) on a daily basis.
- (6) Except where subsection (1) above applies in relation to the costs, an owner is liable for any relevant costs arising from work instructed by a manager from the date on which the work is instructed.
- (7) An owner is liable in accordance with section 10 of this Act for any relevant costs arising from maintenance carried out by virtue of section 8 of this Act from the date on which the maintenance is completed.
- (8) An owner is liable for any relevant costs other than those to which subsections (1) to (7) above apply from—
 - (a) such date; or
 - (b) the occurrence of such event,

as may be stipulated as the date on, or event in, which the costs become due.

- (9) For the purposes of this section and section 12 of this Act, “relevant costs” means, as respects a flat—
- (a) the share of any ~~costs for which the owner is liable by virtue of the management scheme which applies as respects the tenement (except where that management scheme is the development management scheme)~~association costs for which the owner is liable by virtue of the rules of a tenement owners’ association; and
 - (b) any costs for which the owner is liable by virtue of this Act.
- (10) In this section, ~~“emergency work”, “manager” and “scheme decision” have the same meanings as they have in the Tenement Management Scheme.~~“manager” means the manager of a tenement owners’ association.

12 Liability of owner and successors for certain costs

- (1) Any owner who is liable for any relevant costs shall not, by virtue only of ceasing to be such an owner, cease to be liable for those costs.
 - (2) Subject to subsection (3) below, where a person becomes an owner (any such person being referred to in this section as a “new owner”), that person shall be severally liable with any former owner of the flat for any relevant costs for which the former owner is liable.
 - (3) A new owner shall be liable as mentioned in subsection (2) above for relevant costs relating to any maintenance or work (other than local authority work) carried out before the acquisition date only if—
 - (a) notice of the maintenance or work—
 - (i) in, or as near as may be in, the form set out in schedule 2 to this Act; and
 - (ii) containing the information required by the notes for completion set out in that schedule,

(such a notice being referred to in this section and section 13 of this Act as a “notice of potential liability for costs”) was registered in relation to the new owner’s flat at least 14 days before the acquisition date; and
 - (b) the notice had not expired before the acquisition date.
 - (4) In subsection (3) above—

“acquisition date” means the date on which the new owner acquired right to the flat; and

“local authority work” means work carried out by a local authority by virtue of any enactment.
 - (5) Where a new owner pays any relevant costs for which a former owner of the flat is liable, the new owner may recover the amount so paid from the former owner.
- (5A) Where a new owner pays an amount to a tenement owners’ association—
- (a) for which a former owner of the flat is liable, and
 - (b) which does not relate to relevant costs mentioned in subsection (5),
- the new owner may recover the amount so paid from the former owner.
- (6) This section applies as respects any relevant costs for which an owner becomes liable on or after the day on which this section comes into force.

13 Notice of potential liability for costs: further provision

- (1) A notice of potential liability for costs—
 - (a) may be registered in relation to a flat only on the application of—
 - (i) the owner of the flat;
 - (ii) the owner of any other flat in the same tenement; ~~or~~
 - (iia) a local authority entitled to recover costs under section 4A(5), or
 - (iib) the tenement owners' association for the tenement (if any), and
 - (iii) ~~any manager (within the meaning of the Tenement Management Scheme) of the tenement; and...~~
 - (b) shall not be registered unless it is signed by or on behalf of the applicant.
- (2) A notice of potential liability for costs may be registered—
 - (a) in relation to more than one flat in respect of the same maintenance or work; and
 - (b) in relation to any one flat, in respect of different maintenance or work.
- (3) A notice of potential liability for costs expires at the end of the period of 3 years beginning with the date of its registration, unless the notice is renewed by being registered again before the end of that period.
- (3A) The owner of a flat may apply to register a notice (a “notice of discharge”) if—
 - (a) a notice of potential liability for costs in relation to the flat has not expired,
 - (b) the liability for costs under section 12(2) to which the notice of potential liability relates has, in relation to the flat which is the subject of the application, been fully discharged, and
 - (c) the person who registered the notice of potential liability for costs consents to the application.
- (3B) A notice of discharge—
 - (a) must be in the form prescribed by order made by the Scottish Ministers, and
 - (b) on being registered, discharges the notice of potential liability for costs as it applies to the flat which is the subject of the application.
- (4) This section applies to a renewed notice of potential liability for costs as it applies to any other such notice.
- (5) The Keeper of the Registers of Scotland shall not be required to investigate or determine whether the information contained in any notice of potential liability for costs submitted for registration is accurate.
- (6) The Scottish Ministers may by order amend schedule 2 to this Act.
- (7) In section 12 of the Land Registration (Scotland) Act 1979 (c. 33), in subsection (3) (which specifies losses for which there is no entitlement to be indemnified by the Keeper under that section), after paragraph (p) there shall be added—
 - “(q) the loss arises in consequence of an inaccuracy in any information contained in a notice of potential liability for costs registered in pursuance of—
 - (i) section 10(2A)(a) or 10A(3) of the Title Conditions (Scotland) Act 2003 (asp 9); or

- (ii) section 12(3)(a) or 13(3) of the Tenements (Scotland) Act 2004 (asp 11).”

13A Third party’s right to recover debt from owners

- (1) This section applies where—
- (a) a tenement owners’ association for a tenement owes a debt which is constituted by—
 - (i) decree, or
 - (ii) a document which has been registered for execution in the Books of Council and Session or (as the case may be) in the appropriate sheriff court books kept for any sheriffdom, and
 - (b) either—
 - (i) the creditor has executed diligence but has not recovered the debt in full, or
 - (ii) it does not appear that the association has any assets which reasonably could be recovered by diligence.
- (2) The creditor is entitled to recover a proportion of the debt from each of the owners of flats in the tenement who are liable for the costs to which the debt relates under the association’s rules.
- (3) The proportion recoverable from each owner is the proportion for which the owner is liable under the rules.
- (4) Subsection (5) applies where all or part of the proportion of the debt owed by an owner cannot be recovered from the owner for some reason such as that—
- (a) the owner is insolvent, or
 - (b) the owner cannot, by reasonable inquiry, be identified or found.
- (5) The creditor is entitled to recover from each other owner mentioned in subsection (2) an equal share of the amount that cannot be recovered.
- (6) The owner mentioned in subsection (4) is liable to each other owner for any amount which the other owner pays under subsection (5).

14 Former owner’s right to recover costs

An owner who is entitled, by virtue of the ~~Tenement Management Scheme or any other~~rules of a tenement management scheme or any provision of this Act, to recover any costs or a share of any costs from the association or any other owner shall not, by virtue only of ceasing to be an owner, cease to be entitled to recover those costs or that share.

15 Prescriptive period for costs to which section 12 relates

In Schedule 1 to the Prescription and Limitation (Scotland) Act 1973 (c. 52)(obligations affected by prescriptive periods of five years to which section 6 of that Act applies)—

- (a) after paragraph 1(ab) there shall be inserted—

“(ac) to any obligation to pay a sum of money by way of costs to which section 12 of the Tenements (Scotland) Act 2004 (asp 11) applies;”;
and

- (b) in paragraph 2(e), for the words “or (ab)” there shall be substituted “, (ab) or (ac)”.

16 Common property: disapplication of common law right of recovery

Any rule of law which enables an owner of common property to recover the cost of necessary maintenance from the other owners of the property shall not apply in relation to any common property in a tenement where the maintenance of that property is provided for in the management scheme which applies as respects the tenement.

17 Access for maintenance and other purposes

- (1) Where an owner or an owners' association for a tenement gives reasonable notice to the owner or occupier of any other part of the tenement that access is required to, or through, that part for any of the purposes mentioned in subsection (3) below, the person given notice shall, subject to subsection (5) below, allow access for that purpose.
- (2) ~~Without prejudice to subsection (1) above, where the development management scheme applies, notice under that subsection may be given by any owners' association established by the scheme to the owner or occupier of any part of the tenement.~~
- (3) The purposes are—
 - (a) carrying out maintenance or other work by virtue of the management scheme which applies as respects the tenement;
 - (b) carrying out maintenance to any part of the tenement owned (whether solely or in common) by the person requiring access;
 - (c) carrying out an inspection to determine whether it is necessary to carry out maintenance;
 - (d) determining whether the owner of the part is fulfilling the duty imposed by section 8(1) of this Act;
 - (e) determining whether the owner or occupier of the part is complying with the prohibition imposed by section 9(1) of this Act;
 - (f) doing anything which the owner giving notice is entitled to do by virtue of section 19(1) of this Act;
 - (g) where floor area is relevant for the purposes of determining any liability of owners, measuring floor area; and
 - (h) where a power of sale order has been granted in relation to the tenement building or its site, doing anything necessary for the purpose of or in connection with any sale in pursuance of the order (other than complying with paragraph 4(3) of schedule 3 to this Act).
- (4) Reasonable notice need not be given as mentioned in subsection (1) above where access is required for the purpose specified in subsection (3)(a) above and the maintenance or other work requires to be carried out urgently.
- (5) An owner or occupier may refuse to allow—
 - (a) access under subsection (1) above; or

- (b) such access at a particular time,
if, having regard to all the circumstances (and, in particular, whether the requirement for access is reasonable), it is reasonable to refuse access.
- (6) Where access is allowed under subsection (1) above for any purpose, such right of access may be exercised by—
 - (a) the owner who or owners' association which gave notice that access was required; or
 - (b) such person as the owner or, as the case may be, owners' association may authorise for the purpose (any such person being referred to in this section as an “authorised person”).
- (7) Where an authorised person acting in accordance with subsection (6) above is liable by virtue of any enactment or rule of law for damage caused to any part of a tenement, the owner who or owners' association which authorised that person shall be severally liable with the authorised person for the cost of remedying the damage; but an owner or, as the case may be, owners' association making any payment as respects that cost shall have a right of relief against the authorised person.
- (8) Where access is allowed under subsection (1) above for any purpose, the owner who or owners' association which gave notice that access was required (referred to as the “accessing owner or association”) shall, so far as reasonably practicable, ensure that the part of the tenement to or through which access is allowed is left substantially in no worse a condition than that which it was in when access was taken.
- (9) If the accessing owner or association fails to comply with the duty in subsection (8) above, the owner of the part to or through which access is allowed may—
 - (a) carry out, or arrange for the carrying out of, such work as is reasonably necessary to restore the part so that it is substantially in no worse a condition than that which it was in when access was taken; and
 - (b) recover from the accessing owner or association any expenses reasonably incurred in doing so.
- (10) In this section, “owners’ association” means—
 - (a) a tenement owners’ association, or
 - (b) an owners’ association established by the development management scheme.

Insurance

18 Obligation of owner to insure

- (1) It shall be the duty of each owner to effect and keep in force a contract of insurance against the prescribed risks for the reinstatement value of that owner’s flat and any part of the tenement building attaching to that flat as a pertinent.
- (2) The duty imposed by subsection (1) above may be satisfied, in whole or in part, by way of a common policy of insurance arranged for the entire tenement building.
- (3) The Scottish Ministers may by order prescribe risks against which an owner shall require to insure (in this section referred to as the “prescribed risks”).
- (4) Where, whether because of the location of the tenement or otherwise, an owner—
 - (a) having made reasonable efforts to do so, is unable to obtain insurance against a particular prescribed risk; or

- (b) would be able to obtain such insurance but only at a cost which is unreasonably high,

the duty imposed by subsection (1) above shall not require an owner to insure against that particular risk.

- (5) Any owner may by notice in writing request the owner of any other flat in the tenement, and the tenement owners' association for the tenement (if any) may by notice in writing request the owner of any flat in the tenement, to produce evidence of—
 - (a) the policy in respect of any contract of insurance which the ~~owner of that other flat~~recipient is required to have or to effect; and
 - (b) payment of the premium for any such policy,
 and not later than 14 days after that notice is given the recipient shall produce to the owner giving the notice or (as the case may be) the association the evidence requested.
- (6) The duty imposed by subsection (1) above on an owner may be enforced by any other owner or the tenement owners' association for the tenement (if any).

Installation of service pipes etc.

19 Installation of service pipes etc.

- (1) Subject to subsections (2) and (3) below and to section 17 of this Act, an owner shall be entitled—
 - (a) to lead through any part of the tenement such pipe, cable or other equipment; and
 - (b) to fix to any part of the tenement, and keep there, such equipment,
 as is necessary for the provision to that owner's flat of such service or services as the Scottish Ministers may by regulations prescribe.
- (2) The right conferred by subsection (1) above is exercisable only in accordance with such procedure as the Scottish Ministers may by regulations prescribe; and different procedures may be so prescribed in relation to different services.
- (3) An owner is not entitled by virtue of subsection (1) above to lead anything through or fix anything to any part which is wholly within another owner's flat.
- (4) This section is without prejudice to any obligation imposed by virtue of any enactment relating to—
 - (a) planning;
 - (b) building; or
 - (c) any service prescribed under subsection (1) above.

Demolition and abandonment of tenement building

20 Demolition of tenement building not to affect ownership

- (1) The demolition of a tenement building shall not alone effect any change as respects any right of ownership.
- (2) In particular, the fact that, as a consequence of demolition of a tenement building, any land pertaining to the building no longer serves, or affords access to, any flat or other sector shall not alone effect any change of ownership of the land as a pertinent.

21 Cost of demolishing tenement building

(A1) Where a tenement has a tenement owners' association, the cost of demolishing the tenement building is an association cost.

(A2) Subsections (1) to (3) apply in relation to a tenement which does not have a tenement owners' association.

- (1) Except where a tenement burden otherwise provides, the cost of demolishing a tenement building shall, subject to subsection (2) below, be shared equally among all (or both) the flats in the tenement, and each owner is liable accordingly.
- (2) Where the floor area of the largest (or larger) flat in the tenement is more than one and a half times that of the smallest (or smaller) flat the owner of each flat shall be liable to contribute towards the cost of demolition of the tenement building in the proportion which the floor area of that owner's flat bears to the total floor area of all (or both) the flats.
- (3) An owner is liable under subsection (1) ~~this section~~ for the cost of demolishing a tenement building—
 - (a) in the case where the owner agrees to the proposal that the tenement building be demolished, from the date of the agreement; or
 - (b) in any other case, from the date on which the carrying out of the demolition is instructed.
- (4) This section applies as respects the demolition of part of a tenement building as it applies as respects the demolition of an entire tenement building but with any reference to a flat in the tenement being construed as a reference to a flat in the part.
- (5) In this section references to flats in a tenement include references to flats which were comprehended by the tenement before its demolition.
- (6) This section is subject to section 123 of the Housing (Scotland) Act 1987 (c. 26) (which makes provision as respects demolition of buildings in pursuance of local authority demolition orders and recovery of expenses by local authorities etc.).

22 Use and disposal of site where tenement building demolished

- (1) This section applies where a tenement building is demolished and after the demolition two or more flats which were comprehended by the tenement building before its demolition (any such flat being referred to in this section as a "former flat") are owned by different persons.
- (2) Except in so far as—
 - (a) the owners of all (or both) the former flats otherwise agree; or
 - (b) those owners are subject to a requirement (whether imposed by a tenement burden or otherwise) to erect a building on the site or to rebuild the tenement,
 no owner may build on, or otherwise develop, the site.
- (3) Except where the owners have agreed, or are required, to build on or develop the site as mentioned in paragraphs (a) and (b) of subsection (2) above, any owner of a former flat or the tenement owners' association for the tenement (if any) shall be entitled to apply for power to sell the entire site in accordance with schedule 3.
- (4) Except where a tenement burden otherwise provides, the net proceeds of any sale in pursuance of subsection (3) above shall, subject to subsection (5) below, be shared

equally among all (or both) the former flats and the owner of each former flat shall be entitled to the share allocated to that flat.

(5) Where—

- (a) evidence of the floor area of each of the former flats is readily available; and
- (b) the floor area of the largest (or larger) former flat was more than one and a half times that of the smallest (or smaller) former flat,

the net proceeds of any sale shall be shared among (or between) the flats in the proportion which the floor area of each flat bore to the total floor area of all (or both) the flats and the owner of each former flat shall be entitled to the share allocated to that flat.

- (6) The prohibition imposed by subsection (2) above on an owner of a former flat may be enforced by any other such owner.
- (7) In subsections (4) and (5) above, “net proceeds of any sale” means the proceeds of the sale less any expenses properly incurred in connection with the sale.
- (8) In this section references to the site are references to the solum of the tenement building that occupied the site together with the airspace that is directly above the solum and any land pertaining, as a means of access, to the tenement building immediately before its demolition.

23 Sale of abandoned tenement building

(1) Where—

- (a) because of its poor condition a tenement building has been entirely unoccupied by any owner or person authorised by an owner for a period of more than six months; and
- (b) it is unlikely that any such owner or other person will occupy any part of the tenement building,

any owner [or the tenement owners’ association for the tenement \(if any\)](#) shall be entitled to apply for power to sell the tenement building in accordance with schedule 3.

- (2) Subsections (4) and (5) of section 22 of this Act shall apply as respects a sale in pursuance of subsection (1) above as those subsections apply as respects a sale in pursuance of subsection (3) of that section.
- (3) In this section any reference to a tenement building includes a reference to its solum and any land pertaining, as a means of access, to the tenement building.

Liability for certain costs

24 Liability to non owner for certain damage costs

(1) Where—

- (a) any part of a tenement is damaged as the result of the fault of any person (that person being in this subsection referred to as “A”); and
- (b) the management scheme which applies as respects the tenement makes provision for the maintenance of that part,

any owner of a flat in the tenement (that owner being in this subsection referred to as “B”) who is required by virtue of that provision to contribute to any extent to the cost

of maintenance of the damaged part but who at the time when the damage was done was not an owner of the part shall be treated, for the purpose of determining whether A is liable to B as respects the cost of maintenance arising from the damage, as having been such an owner at that time.

- (1A) Where there is a tenement owners' association for a tenement mentioned in subsection (1), the association is to be treated, for the purpose of determining whether A is liable to the association as respects the cost of maintenance arising from the damage, as having been an owner of the damaged part of the tenement at the time when the damage was done.
- (2) In this section "fault" means any wrongful act, breach of statutory duty or negligent act or omission which gives rise to liability in damages.

Miscellaneous and general

25 Amendments of Title Conditions (Scotland) Act 2003

The Title Conditions (Scotland) Act 2003 (asp 9) shall be amended in accordance with schedule 4.

26 Meaning of "tenement"

- (1) In this Act, "tenement" means a building or a part of a building which comprises two related flats which, or more than two such flats at least two of which—
- (a) are, or are designed to be, in separate ownership; and
 - (b) are divided from each other horizontally,
- and, except where the context otherwise requires, includes the solum and any other land pertaining to that building or, as the case may be, part of the building; and the expression "tenement building" shall be construed accordingly.
- (2) In determining whether flats comprised in a building or part of a building are related for the purposes of subsection (1), regard shall be had, among other things, to—
- (a) the title to the tenement; and
 - (b) any tenement burdens,

treating the building or part for that purpose as if it were a tenement.

27 Meaning of "management scheme"

References in this Act to the management scheme which applies as respects any tenement are references to—

- (a) ~~...if the Tenement Management Scheme applies in its entirety as respects the tenement, that Scheme;~~
- (b) if the development management scheme applies as respects the tenement, that scheme; or
- (c) in any other case, ~~any tenement burdens relating to maintenance, management or improvement of the tenement together with any provisions of the Tenement Management Scheme which apply as respects the tenement~~the rules of the tenement owners' association for the tenement (see section 3D(1)).

28 Meaning of “owner”, determination of liability etc.

- (1) In this Act, references to “owner” without further qualification are, in relation to any tenement, references to the owner of a flat in the tenement.
- (2) Subject to subsection (3) below, in this Act “owner” means, in relation to a flat in a tenement, a person who has right to the flat whether or not that person has completed title; but if, in relation to the flat (or, if the flat is held *pro indiviso*, any *pro indiviso* share in it) more than one person comes within that description of owner, then “owner” means such person as has most recently acquired such right.
- (3) Where a heritable security has been granted over a flat and the heritable creditor has entered into lawful possession, “owner” means the heritable creditor in possession of the flat.
- (4) Subject to subsection (5) below, if two or more persons own a flat in common, any reference in this Act to an owner is a reference to both or, as the case may be, all of them.
- (5) Any reference to an owner in sections 5(1) and (2), 6(1), 8(3), 9, 10, 12 to 14, 17(1), (6) and (7), 18(5) and (6), 19, 22, 23 and 24 of, and schedule 3 to, this Act shall be construed as a reference to any person who owns a flat either solely or in common with another.
- (6) Subsections (2) to (5) above apply to references in this Act to the owner of a part of a tenement as they apply to references to the owner of a flat, but as if references in them to a flat were to the part of the tenement.
- (7) Where two or more persons own a flat in common—
 - (a) they are severally liable for the performance of any obligation imposed by virtue of this Act on the owner of that flat; and
 - (b) as between (or among) themselves they are liable in the proportions in which they own the flat.

29 Interpretation

- (1) In this Act, unless the content otherwise requires—
 - “association costs” means costs incurred by a tenement owners’ association,
 - “association decision” means a decision of a tenement owners’ association made in accordance with the association’s rules,
 - “association property” has the meaning given by paragraph 6 of schedule A1,
 - “chimney stack” does not include flue or chimney pot;
 - “close” means a connected passage, stairs and landings within a tenement building which together constitute a common access to two or more of the flats;
 - “demolition” includes destruction and cognate expressions shall be construed accordingly; and demolition may occur on one occasion or over any period of time;
 - “the development management scheme” has the meaning given by section 71(3) of the Title Conditions (Scotland) Act 2003 (asp 9);
 - “door” includes its frame;

“emergency work” means work which, before an association decision can be made in relation to the work, requires to be carried out to association property—

- (a) to prevent damage to any part of a tenement, or
- (b) in the interests of health and safety.

“flat” includes any premises whether or not—

- (a) used or intended to be used for residential purposes; or
- (b) on the one floor;

“lift” includes its shaft and operating machinery;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);

“owner” shall be construed in accordance with section 28 of this Act;

“power of sale order” means an order granted under paragraph 1 of schedule 3 to this Act;

“register”, in relation to a deed creating, varying or discharging tenement owners’ association conditions, a deed of application under section 71 of the Title Conditions (Scotland) Act 2003, a notice of potential liability for costs, a notice of discharge or power of sale order, means register the deed or (as the case may be) the information contained in the notice or order in the Land Register of Scotland or, as appropriate, record the deed or (as the case may be) the notice or order in the Register of Sasines, and “registered” and other related expressions shall be construed accordingly;

“sector” means—

- (a) a flat;
- (b) any close or lift; or
- (c) any other three dimensional space not comprehended by a flat, close or lift,

and the tenement building shall be taken to be entirely divided into sectors;

“solum” means the ground on which a building is erected;

“tenement” shall be construed in accordance with section 26 of this Act;

“tenement burden” means, in relation to a tenement, any real burden (within the meaning of the Title Conditions (Scotland) Act 2003 (asp 9)) which affects—

- (a) the tenement; or
- (b) any sector in the tenement;

“tenement owners’ association” means an association established by section 3A,

“tenement owners’ association conditions” is to be construed in accordance with section 3D(2).

~~“Tenement Management Scheme” means the scheme set out in schedule 1 to this Act;~~

“title to the tenement” shall be construed in accordance with section 1(2) of this Act; and

“window” includes its frame.

- (2) The floor area of a flat is calculated for the purposes of this Act by measuring the total floor area (including the area occupied by any internal wall or other internal dividing structure) within its boundaries; but no account shall be taken of any pertinents or any of the following parts of a flat—
 - (a) a balcony; and
 - (b) except where it is used for any purpose other than storage, a loft or basement.

30 Giving of notice to owners

- (1) Any notice which is to be given to an owner under or in connection with this Act (other than under or in connection with the ~~Tenement Management Scheme~~[rules of a tenement owners' association](#)) may be given in writing by sending the notice to—
 - (a) the owner; or
 - (b) the owner's agent.
- [\(1A\) Any notice which is to be given to a tenement owners' association under or in connection with this Act \(other than under or in connection with the association's rules\) may be given in writing by sending the notice to the association.](#)
- (2) The reference in subsection (1) [or \(1A\)](#) above to sending a notice is to its being—
 - (a) posted;
 - (b) delivered; or
 - (c) transmitted by electronic means.
- (3) Where an owner cannot by reasonable inquiry be identified or found, a notice shall be taken for the purposes of subsection (1)(a) above to be sent to the owner if it is posted or delivered to the owner's flat addressed to "The Owner" or using some similar expression such as "The Proprietor".
- (4) For the purposes of this Act—
 - (a) a notice posted shall be taken to be given on the day of posting; and
 - (b) a notice transmitted by electronic means shall be taken to be given on the day of transmission.

31 Ancillary provision

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act.
- (2) An order under this section may modify any enactment (including this Act), instrument or document.

32 Orders and regulations

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act shall be exercisable by statutory instrument.
- (2) A statutory instrument containing an order or regulations under this Act (except [regulations mentioned in subsection \(2A\) or](#) an order under section 34(2) or, where subsection (3) applies, section 31) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

[\(2A\) Regulations under section 3D\(2\)\(c\)\(ii\), paragraph 13\(1\) of schedule A1 or paragraph 1\(2\) of schedule A3 are subject to the affirmative procedure.](#)

- (3) Where an order under section 31 contains provisions which add to, replace or omit any part of the text of an Act, the order shall not be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Parliament.

33 Crown application

This Act, except section 18, binds the Crown.

34 Short title and commencement

- (1) This Act may be cited as the Tenements (Scotland) Act 2004.
- (2) This Act (other than this section, section 25 and schedule 4) shall come into force on such day as the Scottish Ministers may by order appoint; and different days may be appointed for different purposes.
- (3) Section 25 and schedule 4 shall come into force on the day after Royal Assent.

SCHEDULE A1

(introduced by section 3A(4))

TENEMENT OWNERS' ASSOCIATIONS

PART 1

THE ASSOCIATION

Status

- 1 A tenement owners' association is a body corporate.

Membership

- 2 (1) The members of a tenement owners' association are the owners, for the time being, of each flat in the tenement to which the association relates.
- (2) Where two or more persons own a flat in the tenement in common, both or (as the case may be) all of them are members of the association.

Name and address

- 3 (1) The name of a tenement owners' association is "The Tenement Owners' Association of [address of the tenement building]".
- (2) The association has the following addresses—
- (a) the address of the tenement building, and
 - (b) the address of the manager of the association (if any).

Function and general powers

- 4 (1) The function of a tenement owners' association is to manage the tenement for the benefit of the members of the association.
- (2) The association may do anything which appears to it—
- (a) to be necessary or expedient for the purposes of, or in connection with, the performance of its function, or
 - (b) to be otherwise conducive to the performance of its function.
- (3) The association may, in particular—
- (a) carry out maintenance, improvements or alterations to association property,
 - (b) carry out inspections of association property to determine whether or to what extent it is necessary to carry out maintenance to the property,
 - (c) enter into a contract of insurance in respect of the tenement or any part of it,
 - (d) purchase or otherwise obtain the use of moveable property,
 - (e) open and maintain an account with a bank or building society,

- (f) invest any money held by the association,
 - (g) borrow money,
 - (h) engage employees or appoint agents,
 - (i) enforce any obligation owed by one member to another, the manager or the association under the association's rules or this Act,
 - (j) execute and register a deed creating, varying or discharging tenement owners' association conditions in relation to the tenement,
 - (k) execute and register a deed of application under section 71 of the Title Conditions (Scotland) Act 2003 (development management scheme) on behalf of the owners of the flats in the tenement,
 - (l) instruct demolition of all or part of the tenement.
- (4) But the association may not—
- (a) acquire heritable property,
 - (b) carry on a trade, whether for profit or otherwise.
- (5) The association has an insurable interest in the tenement.
- 5 Nothing may be done by or on behalf of a tenement owners' association unless it is done—
- (a) in accordance with a decision of the association, or
 - (b) by the manager of the association in accordance with this Act or the association's rules.

Meaning of “association property” and “maintenance”

- 6 (1) In this Act, “association property” means, in relation to a tenement, any or all of the following—
- (a) any part of the tenement—
 - (i) which is the common property of two or more of the owners, or
 - (ii) the maintenance of which, or the cost of maintaining which, is, by virtue of a tenement burden, the responsibility of two or more of the owners,
 - (b) the following parts of the tenement building, other than a part mentioned in sub-paragraph (2), so far as not association property by virtue of paragraph (a)—
 - (i) the ground on which it is built,
 - (ii) its foundations,
 - (iii) its external walls,
 - (iv) its roof (including any rafter or other structure supporting the roof),
 - (v) if it is separated from another building by a gable wall, the part of the gable wall that is part of the tenement building, and
 - (vi) any wall (not being one falling within the preceding sub-paragraphs), beam or column that is load bearing.

- (2) The parts referred to in sub-paragraph (1)(b) are—
- (a) any extension which forms part of only one flat,
 - (b) any—
 - (i) door,
 - (ii) window,
 - (iii) skylight,
 - (iv) vent, or
 - (v) other opening,which serves only one flat,
 - (c) any chimney stack or chimney flue.
- 7 (1) In this Act, “maintenance”, in relation to a tenement, includes—
- (a) work carried out in order to comply with section 8(1) (duty to maintain so as to provide support and shelter etc.),
 - (b) other work involving—
 - (i) repairs and replacement,
 - (ii) the installation of insulation,
 - (iii) cleaning, painting and other routine works,
 - (iv) the removal, deterrence or control of vermin or other pests, mould, harmful plants or any similar potentially harmful thing,
 - (v) gardening,
 - (vi) the day to day running of the tenement,
 - (vii) the reinstatement of part (but not most) of the tenement building.
- (2) But “maintenance” does not include demolition, alteration or improvement unless reasonably incidental to the maintenance.

PART 2

KEY DUTIES

Key duties of the association

- 8 (1) A tenement owner's association must—
- (a) appoint a manager in accordance with paragraph 9(1) and (2),
 - (b) hold annual general meetings in accordance with paragraph 10,
 - (c) approve a budget in respect of association costs for each financial year,
 - (d) make applications in relation to tenement identification information in accordance with paragraph 11.

- (2) The association need not comply with sub-paragraph (1)(c)—
 - (a) where the association is established under section 3A(2)(a), until the appointed day,
 - (b) where the association is established under section 3A(2)(b), until the end of the period of one year beginning with the later of—
 - (i) the appointed day, or
 - (ii) the first day on which the tenement may be occupied,
 - (c) where the association is established under section 3A(3) before the appointed day, until the appointed day.
- (3) Paragraph 12 makes provision about the application of sub-paragraph (1) to certain tenements.
- (4) For the purposes of this Part, the first day on which a tenement may be occupied is—
 - (a) the day on which temporary permission to occupy or use a flat in the tenement is granted under section 21 of the Building (Scotland) Act 2003, or
 - (b) where no such permission is granted, either—
 - (i) the day on which a completion certificate is accepted in respect of the construction or conversion of the tenement under section 18 of the Building (Scotland) Act 2003, or
 - (ii) such other day as the First-tier Tribunal determines, on the application of a person with an interest in the tenement, is the day on which the construction or conversion was completed.

Appointment of manager

- 9 (1) A tenement owners' association must appoint its first manager—
- (a) where the association is established under section 3A(2)(a), before the end of the period of 6 months beginning with the appointed day,
 - (b) where the association is established under section 3A(2)(b), before the end of the period of 18 months beginning with the later of—
 - (i) the appointed day, or
 - (ii) the first day on which the tenement may be occupied,
 - (c) where the association is established under section 3A(3), before the end of the period of 6 months beginning with the later of—
 - (i) the appointed day, or
 - (ii) the day on which the association is established.
- (2) If the office of manager becomes vacant, the association must appoint a new manager within the period of 6 months beginning with the day on which the office becomes vacant.

- (3) A certificate of appointment must be signed, within the period of one month beginning with the day of a manager's appointment, by—
 - (a) the manager, and
 - (b) a member of the association on behalf of the association.
- (4) For the purposes of sub-paragraph (3), a certificate of appointment is a document stating—
 - (a) the name of the association,
 - (b) the name of the person appointed as manager, and
 - (c) the period of the person's appointment.
- (5) The actings of the manager are valid regardless of any defect in the manager's appointment.
- (6) A manager's appointment comes to an end—
 - (a) in accordance with the terms of the appointment, or
 - (b) if the association decides to terminate the appointment.

Annual general meetings

- 10 (1) A tenement owners' association must hold its first annual general meeting—
 - (a) where the association is established under section 3A(2)(a), before the end of the period of one year beginning with the appointed day,
 - (b) where the association is established under section 3A(2)(b), before the end of the period of two years beginning with the later of—
 - (i) the appointed day, or
 - (ii) the first day on which the tenement may be occupied,
 - (c) where the association is established under section 3A(3), before the end of the period of one year beginning with the later of—
 - (i) the appointed day, or
 - (ii) the day on which the association is established.
- (2) An annual general meeting—
 - (a) must be called at least once in each calendar year, and
 - (b) must be held no more than 15 months after the day on which the previous annual general meeting was held.

Tenement identification information

- 11 (1) A tenement owners' association must make an application under section 64A(1)(a) (tenement identification information) of the Land Registration etc. (Scotland) Act 2012 ("the 2012 Act") in relation to the tenement—
 - (a) where the association is established under section 3A(2)(a), before the end of the period of two years beginning with the appointed day,

- (b) where the association is established under section 3A(2)(b), before the end of the period of three years beginning with the later of—
 - (i) the appointed day, or
 - (ii) the first day on which the tenement may be occupied.
- (c) where the association is established under section 3A(3), before the end of the period of two years beginning with the later of—
 - (i) the appointed day, or
 - (ii) the day on which the association is established.
- (2) Sub-paragraph (3) applies where—
 - (a) a note of tenement identification information in relation to the tenement is entered in the Land Register of Scotland or (as the case may be) recorded in the Register of Sasines under section 64A of the 2012 Act, and
 - (b) that information changes.
- (3) The association must, within the period of 6 months beginning with the day on which the information changes, make an application—
 - (a) under section 64A(1)(b) of the 2012 Act to amend the information in any note of tenement identification information entered in the Land Register of Scotland to reflect the new information,
 - (b) under section 64A(1)(a) of that Act to record a note of tenement identification information containing the new information in the Register of Sasines.
- (4) In this paragraph, “tenement identification information” has the meaning given by section 64A(2) of the 2012 Act.

Disapplication of certain duties in relation to small and single-owner tenements

- 12 (1) Sub-paragraph (2) applies to a tenement—
 - (a) which is comprised of two or three flats, or
 - (b) each flat in which has the same owner.
- (2) The tenement owners' association for the tenement need not comply with paragraph 8(1)(a), (b) and (c).
- (3) But where the association appoints a person as its manager, this Act applies to that person as it applies to a manager appointed under paragraph 9.
- (4) Where sub-paragraph (2) ceases to apply to the tenement, paragraphs 8(2), 9(1) and 10(1) do not apply to the association and instead—
 - (a) where sub-paragraph (2) ceases to apply to the tenement before the appointed day, the association need not comply with paragraph 8(1)(c) until the appointed day,
 - (b) the association must, if it does not already have a manager, appoint a manager before the end of the period of 6 months beginning with the later of—
 - (i) the appointed day, or
 - (ii) the day on which sub-paragraph (2) ceases to apply to the tenement,

- (c) the association must hold an annual general meeting before the end of the period of one year beginning with the later of—
 - (i) the appointed day, or
 - (ii) the day on which sub-paragraph (2) ceases to apply to the tenement.

Meaning of “appointed day”

- 13 (1) In this Part, the “appointed day” means a day appointed by the Scottish Ministers by regulations.
- (2) Regulations under sub-paragraph (1) may appoint different days for different purposes.

PART 3

THE MANAGER

General functions of association manager

- 14 (1) The role of the manager of a tenement owner's association is to manage the tenement on behalf of the association.
- (2) The manager has the functions conferred by this Act and the association's rules.
- (3) Any duty to which the manager is subject under this Act or the association's rules is owed to the association and to the members of the association.
- (4) In exercising the manager's functions, the manager is an agent of the association.

Compliance with association's duties

- 15 The manager of a tenement owners' association must ensure compliance by the association with its duties under paragraph 8(1).

Implementation of association decisions

- 16 (1) The manager of a tenement owners' association must implement any decision of the association.
- (2) But the manager must not implement such a decision to the extent that the decision is contrary to any provision of this Act or the association's rules.

Compliance with association directions

- 17 (1) The manager of a tenement owners' association must, so far as reasonably practicable, comply with any direction given by the association to the manager.
- (2) But the manager must not comply with such a direction to the extent that the direction is contrary to any provision of this Act or the association's rules.

Power of manager to carry out emergency work

- 18 The manager of a tenement owners' association may instruct or carry out emergency work to association property.

Enforcement of obligations and rules

- 19 (1) The manager of a tenement owners' association may enforce—
- (a) any obligation owed by a member of the association to the association,
 - (b) the association's rules.
- (2) The manager must monitor compliance by the members with their duty to take out insurance on any part of the tenement owned by the member.
- (3) Nothing in sub-paragraph (2) requires the manager to obtain a valuation of any part of the tenement.

Financial administration

- 20 The manager of a tenement owners' association must—
- (a) fix the financial year for the association,
 - (b) keep proper financial records for the association,
 - (c) prepare the association's accounts for each financial year.

Inspection of documents

- 21 The manager of a tenement owners' association must make available for inspection any document which relates to the management of the tenement (other than correspondence with individual members) on the request of any member of the association.

PART 4

ADMINISTRATION

Record of association members

- 22 (1) The manager of a tenement owners' association must maintain a record of—
- (a) the name of each member of the association, and
 - (b) contact details for each member.
- (2) A person who becomes a member of the association must give the manager the member's name and contact details—
- (a) within one month of becoming a member of the association, or
 - (b) where there is no manager when the person becomes a member, within one month of a manager being appointed.
- (3) A member of the association must inform the manager of any change to the member's name or contact details within one month of that change occurring.
- (4) The manager must, on request, provide a member of the association with the name and contact details of another member of the association if it is necessary to do so in connection with the management and maintenance of association property or the operation of the association.

- (5) For the purposes of this paragraph and paragraph 24, a person's contact details—
 - (a) are details of how the person is to be contacted by the manager or a member of the association in connection with the operation of the association, and
 - (b) must include details of how the person may be contacted in writing.

Provision of information under association rules

- 23 (1) This paragraph applies where any information is to be given to a person under or in connection with the rules of a tenement owners' association.
- (2) Where the information is to be given to a member who has provided contact details to the manager under paragraph 22, the information may be given to the member—
 - (a) using those contact details, or
 - (b) by being delivered to the member in writing in accordance with sub-paragraph (4).
- (3) In any other case, the information may be given to the person—
 - (a) by being sent to the person at any postal or electronic address used by the person in connection with the association during the preceding year, or
 - (b) by being delivered to the person in writing in accordance with sub-paragraph (4).
- (4) Information in writing is delivered to a person in accordance with this sub-paragraph if—
 - (a) it is delivered by hand—
 - (i) to the person,
 - (ii) at the person's residence, to another person who lives there, or
 - (iii) at the person's place of business, to an employee of the person or a person authorised to receive the document,
 - (b) where the person is not an individual, it is delivered by hand at the person's place of business to an employee of the person or a person authorised to receive the document, or
 - (c) after diligent enquiries and where there has been an unsuccessful attempt to deliver the document in accordance with—
 - (i) paragraph (a), it is left in or at the person's residence or place of business in a manner in which it is likely to come to the person's attention,
 - (ii) paragraph (b), it is left in or at the person's place of business in such a manner.
- (5) Where the information is to be given to a member who has provided contact details to the manager under paragraph 22—
 - (a) information may be delivered at, or left in or at, a residence or place of business under sub-paragraph (4) only if the contact details include that residence or (as the case may be) place of business,

- (b) a reference in sub-paragraph (4)(a), (b) or (c) to the person to whom information is to be given includes a reference to an agent of the member whose details have been provided to the manager under paragraph 22.
- (6) Where the information is given to the person—
 - (a) by being posted, it is taken to be given on the day on which it is posted,
 - (b) by being sent by electronic means, it is taken to be given on the day on which it is sent.
- (7) Where the information is to be given to a member who has died, the information is to be given to the member's executor.
- (8) Where the information is to be given to a member or (as the case may be) a member's executor who cannot by reasonable enquiry be identified or found, a document is to be taken for the purposes of this paragraph to be given to the member or executor if it is posted or delivered to the member's flat addressed to "The Owner" or using some similar expression such as "The Proprietor".

Information to be provided on transfer of flat

- 24 (1) This paragraph applies where a member of a tenement owners' association transfers ownership of the member's flat to another person (the "transferee").
- (2) The member must, before the date on which the transferee is entitled to take entry to the flat, give the manager the following information, insofar as the member is aware of it—
- (a) the name and postal or email address of the transferee,
 - (b) the name and postal or email address of the transferee's solicitor or other agent in respect of the transfer,
 - (c) the date on which the transferee is entitled to take entry,
 - (d) the member's contact details after that date.

Information to be provided in relation to registration of flats and other parts of the tenement

- 25 (1) Sub-paragraph (2) applies where a member of a tenement owners' association intends to do something which is likely to result in a title sheet in respect of any part of the tenement being made up or cancelled.
- (2) The member must inform the manager of—
- (a) the likelihood of the title sheet being made up or cancelled, and
 - (b) when that is likely to occur.
- (3) Where a member of the association becomes aware that a note of tenement identification information relating to the tenement is inaccurate, the member must inform the manager of the inaccuracy as soon as reasonably practicable.
- (4) In this paragraph—
- "note of tenement identification information" means a note of tenement identification information entered in the Land Register of Scotland or recorded in

the Register of Sasines in accordance with section 64A(4) of the Land Registration etc. (Scotland) Act 2012,

“title sheet” means a title sheet made up under section 3 of that Act.

Execution of documents

26 A document is signed by a tenement owners' association if it is signed on behalf of the association by—

- (a) the manager of the association acting within the manager's authority, or
- (b) a member of the association, or any other person, authorised by the association to sign the document on its behalf.

SCHEDULE A2

(introduced by section 3D(1))

TENEMENT OWNERS' ASSOCIATION RULES: DEFAULT RULES

PART 1

DEFINITIONS

Definitions

1 (1) In these rules, a reference to—

- (a) the “association” is to a tenement owners' association to which these rules apply,
- (b) the “tenement” is to the tenement to which the association relates,
- (c) an “owner” is to the owner of a flat in the tenement,
- (d) a “member” is to a member of the association,
- (e) the “manager” is to the manager of the association,
- (f) a “financial year” is to a financial year of the association,
- (g) a numbered rule is to the paragraph of these rules bearing that number.

(2) Any expression used in these rules which is defined in section 29 of this Act has the meaning given by that section.

PART 2

ASSOCIATION DECISIONS

Association decisions

2 A decision of the association is to be made in accordance with this Part.

Allocation of votes

- 3 (1) For the purposes of making an association decision, one vote is allocated to each flat in the tenement.
- (2) A right to vote allocated to a flat may be exercised by—
- (a) the owner of the flat, or
 - (b) a person nominated in writing by the owner to exercise the vote on behalf of the owner.
- (3) Where there are two or more owners of a flat, the vote allocated to that flat may be exercised by any of the owners.
- (4) But if the owners of the flat disagree as to how the vote is to be cast, the vote is not to be counted unless—
- (a) where one of the owners owns more than a half share of the flat, the vote is exercised by that owner,
 - (b) in any other case, the vote is the agreed vote of the owners who together own more than a half share of the flat.

Votes required for association decisions

- 4 (1) An association decision is made if at least 50% of the votes allocated under rule 3 are cast in favour of the decision except as provided for in sub-paragraph (2).
- (2) Where the decision is—
- (a) one mentioned in sub-paragraph (3), the decision is made if at least 75% of the votes allocated under rule 3 are cast in favour of it,
 - (b) a decision to demolish the tenement building, the decision is made if all of the votes so allocated are cast in favour of it.
- (3) The decisions referred to in sub-paragraph (2)(a) are decisions to—
- (a) make improvements or alterations to, or replacements of, association property,
 - (b) demolish part of the association property,
 - (c) make payments from any reserve fund maintained by the association,
 - (d) execute and register a deed creating, varying or discharging tenement owners' association conditions in relation to the tenement,
 - (e) execute and register a deed of application under section 71 of the Title Conditions (Scotland) Act 2003 (development management scheme) in relation to the tenement.
- (4) Sub-paragraph (5) applies where a decision mentioned in sub-paragraph (3)(a) or (b) relates to property which is not the common property of the owners (or not the common property of owners who between them own two or more flats in the tenement).
- (5) The decision may be implemented only if the owner of the property consents in writing to the improvements, alterations, replacements or demolition in question.

How decisions are to be made

- 5 (1) An association decision is to be made—
- (a) at a general meeting of the association, or
 - (b) in accordance with sub-paragraph (2).
- (2) An association decision is made in accordance with this sub-paragraph by—
- (a) the manager—
 - (i) consulting each owner about the matter to be decided, and
 - (ii) counting the votes cast, or
 - (b) a member—
 - (i) consulting each other owner about the matter to be decided, and
 - (ii) counting the votes cast.
- (3) An owner need not be consulted under sub-paragraph (2)(a)(i) or (b)(i) if it is impractical to do so due to the owner's absence or some other good reason.
- (4) Where an association decision is made—
- (a) in accordance with sub-paragraph (2)(a), the manager must, as soon as practicable after counting the votes in respect of the decision—
 - (i) record the votes cast and the decision made, and
 - (ii) give notice of the decision made to each member of the association by giving them a copy of the record.
 - (b) in accordance with sub-paragraph (2)(b), the member who carried out the consultation must, as soon as practicable after counting the votes in respect of the decision—
 - (i) record the votes cast and the decision made,
 - (ii) give a copy of the record to the manager, and
 - (iii) either give notice of the decision made to each other member by giving them a copy of the record, or request the manager to do so.
- (5) Where two or more persons own a flat in common, consultation with one of the owners is sufficient for the purposes of sub-paragraph (2)(a)(i) or (b)(i).

Procedural irregularities

- 6 (1) A procedural irregularity in the making of an association decision does not affect the validity of the decision.
- (2) Sub-paragraph (3) applies where an owner—
- (a) is directly affected by a procedural irregularity in the making of an association decision, and
 - (b) either—
 - (i) was not aware that any association costs were being incurred in relation to the decision, or

- (ii) on becoming aware that such costs were being incurred, immediately objected to the incurring of the costs.
- (3) The owner is not liable for the costs (whether incurred before or after the date of any objection) and, accordingly, the owner is left out of account for the purposes of determining the share of the costs for which each of the other owners is liable.

Annulment of association decision

- 7 (1) This rule applies where—
- (a) an association decision is made to carry out, or authorise, maintenance to association property,
 - (b) an owner, or a group of owners, did not vote in favour of the decision, and
 - (c) that owner or group would be liable for at least 75% of the costs arising from the decision.
- (2) That owner or group may annul the decision by giving notice that the decision is annulled to the manager and each of the other members of the association.
- (3) Notice under sub-paragraph (2) must be given—
- (a) where the decision was made at a general meeting of the association at which the owner or (as the case may be) at least one member of the group of owners was present, before the end of the period of 21 days beginning with the day of the meeting,
 - (b) otherwise, before the end of the period of 21 days beginning with the day on which the owner or (as the case may be) group of owners was notified of the decision.
- (4) Where the members of a group of owners were notified of the decision on different days, the reference in sub-paragraph (3) to the day on which the group of owners was notified of the decision is a reference to the day on which the last of the group was notified of it.

Effect of association decision

- 8 An association decision is binding on—
- (a) the members of the association when the decision is made, and
 - (b) any future members of the association.

PART 3

MEETINGS

Calling of annual general meeting

- 9 (1) An annual general meeting to be held in accordance with paragraph 10 of schedule A1 of this Act is to be called by the manager.

- (2) But the meeting may be called by a member where—
 - (a) the manager has not called the meeting when required to do so, or
 - (b) the association does not have a manager.

General meetings

- 10 (1) The manager—
 - (a) may call a general meeting of the association at any time,
 - (b) must call such a meeting if owners who have at least 25% of the votes allocated under rule 3 require such a meeting to be called.
- (2) A member may call a general meeting of the association if—
 - (a) the manager has not called a general meeting when required to do so by sub-paragraph (1)(b), or
 - (b) the association does not have a manager.

Attendance at meetings

- 11 (1) A person may attend an annual or other general meeting of the association—
 - (a) in person, or
 - (b) by electronic means.
- (2) The manager of the association must take reasonable steps to ensure that a person who wishes to do so may attend a general meeting by electronic means.

Notice to be given of annual or other general meeting

- 12 (1) A meeting is called under rule 9 or 10 by notice of the meeting being given, in accordance with sub-paragraph (2), not later than 14 days before the day fixed for the meeting.
- (2) The notice is to be given—
 - (a) where the meeting is called by the manager, to each member,
 - (b) where the meeting is called by a member, to the manager (if any) and each other member.
- (3) The notice must state—
 - (a) the date and time fixed for the meeting,
 - (b) where attendance at the meeting is to be—
 - (i) in person, the place at which the meeting is to be held,
 - (ii) by electronic means, the means by which the meeting is to be held,
 - (iii) both in person and by electronic means, the place at which, and the means by which, the meeting is to be held,
 - (c) the business to be conducted at the meeting.

Proceedings at meetings

- 13 (1) The manager must attend any general meeting of the association unless the manager has a reasonable excuse for not attending.
- (2) The members in attendance at a general meeting must select a person to chair the meeting (the "chair").
- (3) The chair is to be one of the members in attendance at the meeting.
- (4) A vote on any matter at a general meeting is to be taken by—
 (a) a show of hands, or
 (b) such other method as the chair considers appropriate.
- (5) The manager or, where the manager is not at the meeting, a member nominated by the chair, must—
 (a) keep a record of the business conducted, including any votes cast and any decision made, at the meeting, and
 (b) give a copy of that record to each member (or, as the case may be, each other member) as soon as practicable after the meeting.
- (6) A member who is not at the meeting is to be treated as being given notice of any decision made by the association at the meeting by being given a copy of the record of the business conducted at the meeting.

PART 4

OWNERS' LIABILITY FOR ASSOCIATION COSTS

Owners' liabilities

- 14 (1) The owners of all of the flats in the tenement are liable for association costs in equal proportions except as provided for in sub-paragraphs (2) to (4).
- (2) The owners of any association property mentioned in sub-paragraph (5) are liable for maintenance and running costs relating to that property in the proportions in which the owners share ownership of the property.
- (3) Where the floor area of any flat in the tenement is more than one and a half times that of another flat in the tenement, sub-paragraph (4) applies to maintenance and running costs relating to any association property other than property mentioned in sub-paragraph (5).
- (4) The owners of all of the flats in the tenement are liable for the costs in the proportions which the floor area of the owners' flats bear to the total floor area of all of the flats in the tenement.
- (5) The property referred to in sub-paragraphs (2) and (3) is property which is the property of two or more of the owners, other than a roof over the close of the tenement which is common property by virtue of section 3(1)(a) of this Act.
- (6) In this rule, "maintenance and running costs" means association costs which are—
 (a) costs arising from any maintenance or inspection of association property,

- (b) remuneration payable to a person appointed to manage the carrying out of such maintenance as is mentioned in paragraph (a).
- (c) running costs relating to any association property (other than costs incurred solely for the benefit of one flat).
- (d) costs recoverable by a local authority in respect of work relating to any association property carried out by the authority by virtue of any enactment.

Exempting owner from liability

- 15 (1) The association may decide that an owner is not liable for such association costs as are specified in the decision.
- (2) A vote in favour of such an association decision is not to be counted if any of the following persons is an owner who, by virtue of the decision, would not be liable as mentioned in sub-paragraph (1)—
- (a) the owner exercising the vote, or
 - (b) where the vote is exercised by a person nominated by the owner—
 - (i) that person, or
 - (ii) the owner who nominated that person.
- (3) Where an owner is not liable for an amount by virtue of sub-paragraph (1), the other owners who are liable for a share of the costs mentioned in that sub-paragraph are liable for a share of that amount in equal proportion.

PART 5

ANNUAL BUDGET, SERVICE CHARGE AND ASSOCIATION FUNDS

Annual budget

- 16 (1) The association's budget for each financial year must set out—
- (a) details of any maintenance work which the manager considers it will be necessary to carry out to association property during that year in order to ensure compliance with section 8 of this Act, including—
 - (i) the estimated cost of that work,
 - (ii) how that estimate was arrived at,
 - (iii) the time line for completion of the work,
 - (b) details of any other maintenance work proposed to be carried out to association property during that year, including—
 - (i) the estimated cost of that work,
 - (ii) how that estimate was arrived at,
 - (iii) the time line for completion of the work,
 - (c) details of any other costs expected to be incurred by the association during that year, including the nature of those costs,

- (d) details of—
 - (i) any other amount to be included in the service charge, and
 - (ii) the reason that amount is included in the charge.
- (e) in respect of each owner—
 - (i) the service charge payable by the owner for that year,
 - (ii) how that charge was calculated.
- (f) the date or dates on which the service charge will be due for payment,
- (g) an estimate of any other funds which the association is likely to receive during the year and the source of those funds.
- (2) The service charge payable by each owner is to be calculated by reference to the proportion of the costs mentioned in sub-paragraph (1)(a), (b) and (c), and any amount mentioned in sub-paragraph (1)(d), for which the owner is liable to the association.

Approval of budget

- 17 (1) The manager must—
 - (a) prepare a draft budget for the association for each financial year, and
 - (b) give each member a copy of the draft budget.
- (2) The association may—
 - (a) approve the draft budget,
 - (b) approve the draft budget with such variations as the members may specify, or
 - (c) reject the draft budget.
- (3) Where the association rejects the draft budget, it must direct the manager to, within the period of 6 weeks beginning with the day on which the draft budget is rejected—
 - (a) prepare a revised draft budget, and
 - (b) give each member a copy of that revised draft for approval.
- (4) Sub-paragraphs (2) and (3) apply to a revised draft budget as they apply to the draft budget.
- (5) Where, at the start of a financial year, no budget has been approved under sub-paragraph (2) for the year—
 - (a) the service charge due by each owner is, until a budget is approved for the financial year, the same as the service charge due by the owner under the budget for the previous financial year, and
 - (b) the charge is to be paid on the anniversary (or anniversaries) of the date (or dates) on which the charge was due for payment under the budget for the previous financial year.

Additional service charge

- 18 (1) The manager may from time to time determine that an additional service charge is payable by all or some of the owners.
- (2) An additional service charge may be imposed only in respect of—
- (a) association costs which—
 - (i) were not set out in the association's budget for the year, or
 - (ii) exceed an estimated amount set out in the budget, or
 - (b) an amount for which an owner becomes liable under rule 15(3) or 19(2).
- (3) The additional service charge due by each owner is to be calculated by reference to the owner's liability for the costs to which the charge relates.
- (4) The total amount of any additional service charge to be paid by an owner in a financial year must not exceed 25% of the service charge for the owner set out in the budget for that year unless the manager submits to the association at a general meeting a draft supplementary budget setting out—
- (a) the amount of the additional service charge due by the owner, and
 - (b) the date or dates on which the charge is due to be paid.
- (5) Rule 17(2) to (4) applies in relation to a draft supplementary budget as it applies to a draft budget.
- (6) In calculating the total amount of any additional service charge for the purposes of sub-paragraph (4), no account is to be taken of any additional service charge payable in respect of the cost of emergency work carried out by virtue of paragraph 18 of schedule A1 of this Act or rule 25.

Redistribution of service charge which cannot be recovered

- 19 (1) Sub-paragraph (2) applies where a service charge or additional service charge cannot be recovered (in whole or in part) from an owner ("owner A") for some reason such as that—
- (a) owner A is insolvent, or
 - (b) owner A cannot, by reasonable inquiry, be identified or found.
- (2) Where a portion of the unrecoverable amount of the service charge relates to association costs for which one or more other owners are liable with owner A, those other owners are liable for that portion in equal proportions.
- (3) Owner A is liable to each other owner for any amount for which the other owner becomes liable under sub-paragraph (2).
- (4) But sub-paragraph (2) does not apply to any amount that the local authority has paid under section 4A of this Act in respect of owner A's share of any item of association costs.

Liability for, and collection of, service charge

- 20 (1) Each owner is liable to the association for—
- (a) the amount of the service charge payable by the owner in accordance with the association's budget,
 - (b) any amount of additional service charge payable by the owner in accordance with rule 18.
- (2) Where the association approves its budget, the manager must give each owner a notice requiring payment, on the date (or dates) specified in the budget, of the amount of the service charge specified in the budget as being due by the owner.
- (3) Where the manager makes a determination under rule 18(1), the manager must give each owner to whom the determination relates a notice—
- (a) requiring payment, on the date (or dates) stated in the notice, of the additional service charge determined under that sub-paragraph, and
 - (b) explaining why the additional charge is payable.
- (4) Where any service charge or additional service charge (or part of it) remains outstanding not less than 28 days after it became due for payment, the manager may give a notice to the owner concerned requiring the owner to pay interest on the sum outstanding at such reasonable rate and from such date as the manager may specify in the notice.

Discharge of owners' liabilities for association costs

- 21 (1) An owner's liabilities for association costs for a financial year are discharged, in accordance with this paragraph, by the payment of the owner's service charge for the year.
- (2) The owner's liabilities are discharged in the order in which the costs become payable by the association.
- (3) Sub-paragraph (4) applies where—
- (a) more than one amount of association costs become payable on the same day, and
 - (b) the owner's service charge balance is insufficient to discharge the owner's liabilities for those costs in full.
- (4) The owner's liabilities for the costs mentioned in sub-paragraph (3)(a) are discharged—
- (a) by the amount of the owner's service charge balance (if any), and
 - (b) in the proportions that the owner's liabilities for each amount of costs mentioned in that sub-paragraph bear to the owner's liabilities for all of the costs mentioned in that sub-paragraph.
- (5) Sub-paragraph (6) applies where the service charge includes, by virtue of rule 16(1)(d), an amount which does not relate to the owner's liability for association costs.
- (6) That amount is not to be treated as having been paid until all of the owner's liabilities for association costs for the year have been discharged.

- (7) Sub-paragraph (8) applies where the total amount of the service charge paid by the owner during the financial year exceeds—
 - (a) the amount of the owner's liabilities for association costs payable during that year, and
 - (b) any other amount included in the service charge by virtue of rule 16(1)(d).
- (8) The association is to—
 - (a) retain the excess amount paid by the owner, and
 - (b) offset that amount against the owner's service charge for the next financial year.
- (9) Nothing in this rule prevents an owner's liability for association costs being discharged (in whole or in part) in any other way (for example, by being met from a reserve fund held by the association or by a third party).
- (10) For the purposes of this rule and rule 22—
 - (a) a service charge includes an additional service charge,
 - (b) an owner's service charge balance is the amount of the service charge already paid by the owner in a financial year less the amount of the owner's liabilities for association costs already discharged in that year.

Liability for service charge on transfer of ownership of flat

- 22 (1) This rule applies where the owner of a flat in the tenement (the "transferor") transfers ownership of the flat to another person (the "transferee").
- (2) The transferee is severally liable with the transferor for the amount of any service charge for which the transferor is liable on the day on which the transferee acquires right to the flat.
- (3) But the transferee is not liable under sub-paragraph (2) for any amount of service charge which relates to association costs for which the transferee is not severally liable under section 12 of this Act.
- (4) Except as provided for in sub-paragraph (6), any amount of service charge paid by the transferor is to be retained by the association.
- (5) Sub-paragraph (6) applies where—
 - (a) an amount of service charge paid by the transferor relates to association costs for which the transferor is liable but the transferee is not severally liable, and
 - (b) the amount paid exceeds the actual amount of the transferor's liability for those costs.
- (6) The association must pay the transferor a sum equivalent to the amount by which the amount paid exceeds the actual amount of the transferor's liability.
- (7) Any sum retained by the association under sub-paragraph (4) is to be treated as if it were paid by the transferee.

Estimate of owner's liabilities on transfer of flat

- 23 The manager must, as soon as reasonably practicable after receiving a request to do so from an owner of a flat in the tenement who proposes to transfer ownership of the flat, provide the owner with the following information—
- (a) the association costs for which the owner is liable in the financial year in which the proposed date of the transfer falls,
 - (b) an estimate of the amount of the owner's liability for those costs which will have been discharged before that date,
 - (c) the amount of any service charge due to be paid by the owner after that date and the date on which any payment is to be made,
 - (d) an estimate of the amount (if any) by which the amount of the service charge paid by the owner before that date will exceed the amount of the owner's liabilities which will have been discharged before that date.

Association funds

- 24 (1) Any association funds must be—
- (a) held in the name of the association, and
 - (b) deposited by the manager in a bank or building society account.
- (2) But where association funds are likely to be held for some time, the manager must ensure that the funds are—
- (a) deposited in an account which is interest bearing, or
 - (b) invested in such other way as the association may decide.
- (3) The manager must ensure that any association funds forming a reserve fund are kept separately from other association funds.

PART 6EMERGENCY WORK*Authority to carry out emergency work*

- 25 (1) A member may instruct or carry out emergency work to association property.
- (2) The association must reimburse a member who pays for emergency work.

SCHEDULE A3

-
(Introduced by section 3D(8))

-

DEFAULT TENEMENT OWNERS' ASSOCIATION RULES: TRANSITION PERIOD

Transition period

- 1 (1) In this schedule, “transition period” means the period of 20 years beginning with the day on which section 2 of the Tenements (Amendment) (Scotland) Act 2025 comes into force.
- (2) The Scottish Ministers may by regulations modify sub-paragraph (1) so as to substitute a different period for the period for the time being mentioned there (provided that the period for the time being mentioned there has not expired).

Application of default tenement owners' association rules during transition period

- 2 (1) This paragraph applies during the transition period where, under section 3D(1)(b), a tenement owners' association's rules are the default association rules.
- (2) Those rules apply in accordance with sub-paragraphs (3) to (5).
- (3) Part 2 (association decisions) applies unless—
 - (a) a pre-commencement tenement burden makes provision about the making of decisions by the owners of the flats in the tenement about any matter to be decided by the association, and
 - (b) that provision is the same for each flat in the tenement.
- (4) In Part 4 (owners' liability for association costs)—
 - (a) rule 14 (owners' liabilities) applies except to the extent that a pre-commencement tenement burden provides that the entire liability for costs specified in the burden is to be met by one or more of the owners,
 - (b) rule 15 (exempting owner from liability) applies except to the extent that a pre-commencement tenement burden provides how liability for costs specified in the burden is to be redistributed amongst owners of flats in the tenement in the event that the owners decide that one of the them is not liable for a share of those costs.
- (5) In Part 5 (annual budget, service charge and association funds)—
 - (a) rules 16 (annual budget), 17 (approval of budget), 18 (additional service charge) and 20 (liability for, and collection of, service charge) apply except to the extent that a pre-commencement tenement burden makes provision for budgeting for, and collecting payment by the owners of flats in the tenement of, costs specified in the burden,
 - (b) rule 19 (redistribution of service charge which cannot be recovered) applies except to the extent that a pre-commencement tenement burden provides how liability for costs specified in the burden is to be redistributed amongst the owners of flats in the tenement in the event that a share of the costs is not recoverable from one of the owners,

- (c) rule 24 (association funds) applies except to the extent that a pre-commencement tenement burden makes provision about holding funds on behalf of the owners of the flats in the tenement.
- (6) A tenement burden mentioned in—
 - (a) sub-paragraph (3) is to be treated as if it related to the making of association decisions by the owners (as well as any other decisions made by the owners of the flats in the tenement).
 - (b) sub-paragraph (4) or (5)(b) is to be treated as if it related to liability of the owners for association costs (as well as any other costs specified in the burden).
 - (c) sub-paragraph (5)(a) is to be treated as if it related to budgeting for, and collecting payment by the owners of, association costs (as well as any other costs incurred by or on behalf of the owners).
 - (d) sub-paragraph (5)(c) is to be treated as if it related to association funds (as well as any other funds held on behalf of the owners).
- (7) In this paragraph a reference to—
 - (a) a Part is to a Part of schedule A2.
 - (b) a numbered rule is to a paragraph of that schedule bearing that number.
 - (c) a “pre-commencement tenement burden” is to a tenement burden which affects the tenement on the day on which section 2 of the Tenements (Amendment) (Scotland) Act 2025 comes into force.

Registration of preservative deed of conditions

- 3 (1) This paragraph applies during the transition period where—
- (a) no tenement owners' association conditions affect a tenement owners' association,
 - (b) a member of the association requests that the association registers a preservative deed of conditions, and
 - (c) such a request has not previously been made to the association (by that or any other member).
- (2) The manager of the association must, as soon as reasonably practicable after the request is made, inform each other member of the association that—
- (a) a request has been made to register a preservative deed of conditions,
 - (b) the manager will prepare the deed unless the association objects to such a deed being registered,
 - (c) the association will object to such a deed being registered only if owners having at least 75% of the votes allocated to owners notify the manager that they so object, and
 - (d) any such objection must be notified to the manager by an owner within the period of 28 days beginning with the day on which the manager informs the owner that the request has been made.

- (3) Where the association does not object as mentioned in sub-paragraph (2)(b), the manager must—
- (a) prepare the preservative deed of conditions,
 - (b) give a copy of the deed to each member of the association and inform each member that—
 - (i) the manager will register the deed unless the association objects to the deed being registered,
 - (ii) the association will object to the deed being registered only if owners having at least 75% of the votes allocated to owners notify the manager that they so object, and
 - (iii) any such objection must be notified to the manager by an owner within the period of 28 days beginning with the day on which the manager gives the owner a copy of the deed.
- (4) Where the association does not object as mentioned in sub-paragraph (3)(b)(i), the manager must register the deed on behalf of the association.
- (5) Where two or more persons own a flat in common—
- (a) the reference in sub-paragraph (2)(d) to the day on which the manager informs the owner that the request has been made is a reference to the day on which the manager so informs the last of those persons,
 - (b) the reference in sub-paragraph (3)(b)(iii) to the day on which the manager gives the owner a copy of the deed is a reference to the day on which the manager gives a copy of the deed to the last of those persons.
- (6) In this paragraph—
- (a) a “preservative deed of conditions” is a deed creating tenement owners’ association conditions which set out the default tenement owners’ association rules with (in addition to the modifications required by section 3D(2)(c)(i)) such modifications as—
 - (i) are required to make the effect of the conditions consistent with the effect of tenement burdens which affect the tenement on the day on which section 2 of the Tenements (Amendment) (Scotland) Act 2025 comes into force, and
 - (ii) are permitted by regulations made under section 3D(2)(c)(ii).
 - (b) a reference to preparing a preservative deed of conditions includes a reference to instructing the preparation of such a deed.

(

~~SCHEDULE 1~~
~~(introduced by section 4)~~

~~TENEMENT MANAGEMENT SCHEME~~

~~RULE 1—~~

~~SCOPE AND INTERPRETATION~~

Scope of scheme

- ~~1.1 This scheme provides for the management and maintenance of the scheme property of a tenement.~~

Meaning of “scheme property”

- ~~1.2 For the purposes of this scheme, “scheme property” means, in relation to a tenement, all or any of the following—~~
- ~~(a) any part of the tenement that is the common property of two or more of the owners;~~
 - ~~(b) any part of the tenement (not being common property of the type mentioned in paragraph (a) above) the maintenance of which, or the cost of maintaining which, is, by virtue of a tenement burden, the responsibility of two or more of the owners;~~
 - ~~(c) with the exceptions mentioned in rule 1.3, the following parts of the tenement building (so far as not scheme property by virtue of paragraph (a) or (b) above)—~~
 - ~~(i) the ground on which it is built;~~
 - ~~(ii) its foundations;~~
 - ~~(iii) its external walls;~~
 - ~~(iv) its roof (including any rafter or other structure supporting the roof);~~
 - ~~(v) if it is separated from another building by a gable wall, the part of the gable wall that is part of the tenement building; and~~
 - ~~(vi) any wall (not being one falling within the preceding sub-paragraphs), beam or column that is load bearing.~~

Parts not included in rule 1.2(c)

- ~~1.3 The following parts of a tenement building are the exceptions referred to in rule 1.2(c)—~~
- ~~(a) any extension which forms part of only one flat;~~
 - ~~(b) any—~~
 - ~~(i) door;~~
 - ~~(ii) window;~~
 - ~~(iii) skylight;~~
 - ~~(iv) vent; or~~
 - ~~(v) other opening;~~

- ~~which serves only one flat,~~
(e) ~~any chimney stack or chimney flue.~~

Meaning of “scheme decision”

- 1.4 A decision is a “scheme decision” for the purposes of this scheme if it is made in accordance with—
- (a) rule 2, or
 - (b) where that rule does not apply, the tenement burden or burdens providing the procedure for the making of decisions by the owners.

Other definitions

- 1.5 In this scheme—
- “maintenance” includes repairs and replacement, the installation of insulation, cleaning, painting and other routine works, gardening, the day to day running of a tenement and the reinstatement of a part (but not most) of the tenement building, but does not include demolition, alteration or improvement unless reasonably incidental to the maintenance;
 - “manager” means, in relation to a tenement, a person appointed (whether or not by virtue of rule 3.1(c)(i)) to manage the tenement, and
 - “scheme costs” has the meaning given by rule 4.1.

Rights of co-owners

- 1.6 If a flat is owned by two or more persons, then one of them may do anything that the owner is by virtue of this scheme entitled to do.

RULE 2—

PROCEDURE FOR MAKING SCHEME DECISIONS

Making scheme decisions

- 2.1 Any decision to be made by the owners shall be made in accordance with the following provisions of this rule.

Allocation and exercise of votes

- 2.2 Except as mentioned in rule 2.3, for the purpose of voting on any proposed scheme decision one vote is allocated as respects each flat, and any right to vote is exercisable by the owner of that flat or by someone nominated by the owner to vote as respects the flat.

Qualification on allocation of votes

- 2.3 ~~No vote is allocated as respects a flat if—~~
- ~~(a) the scheme decision relates to the maintenance of scheme property, and~~
 - ~~(b) the owner of that flat is not liable for maintenance of, or the cost of maintaining, the property concerned.~~

Exercise of vote where two or more persons own flat

- 2.4 ~~If a flat is owned by two or more persons the vote allocated as respects that flat may be exercised in relation to any proposal by either (or any) of them, but if those persons disagree as to how the vote should be cast then the vote is not to be counted unless—~~
- ~~(a) where one of those persons owns more than a half share of the flat, the vote is exercised by that person, or~~
 - ~~(b) in any other case, the vote is the agreed vote of those who together own more than a half share of the flat.~~

Decision by majority

- 2.5 ~~A scheme decision is made by majority vote of all the votes allocated.~~

Notice of meeting

- 2.6 ~~If any owner wishes to call a meeting of the owners with a view to making a scheme decision at that meeting that owner must give the other owners at least 48 hours' notice of the date and time of the meeting, its purpose and the place where it is to be held.~~

Consultation of owners if scheme decision not made at meeting

- 2.7 ~~If an owner wishes to propose that a scheme decision be made but does not wish to call a meeting for the purpose that owner must instead—~~
- ~~(a) unless it is impracticable to do so (whether because of absence of any owner or for other good reason) consult on the proposal each of the other owners of flats as respects which votes are allocated, and~~
 - ~~(b) count the votes cast by them.~~

Consultation where two or more persons own flat

- 2.8 ~~For the purposes of rule 2.7, the requirement to consult each owner is satisfied as respects any flat which is owned by more than one person if one of those persons is consulted.~~

Notification of scheme decisions

- 2.9 ~~A scheme decision must, as soon as practicable, be notified—~~
- ~~(a) if it was made at a meeting, to all the owners who were not present when the decision was made, by such person as may be nominated for the purpose by the persons who made the decision, or~~

- (b) ~~in any other case, to each of the other owners, by the owner who proposed that the decision be made.~~

Case where decision maybe annulled by notice

- 2.10 ~~Any owner (or owners) who did not vote in favour of a scheme decision to carry out, or authorise, maintenance to scheme property and who would be liable for not less than 75 per cent. of the scheme costs arising from that decision may, within the time mentioned in rule 2.11, annul that decision by giving notice that the decision is annulled to each of the other owners.~~

Time limits for rule 2.10

- 2.11 ~~The time within which a notice under rule 2.10 must be given is—~~
- ~~(a) if the scheme decision was made at a meeting attended by the owner (or any of the owners), not later than 21 days after the date of that meeting, or~~
 - ~~(b) in any other case, not later than 21 days after the date on which notification of the making of the decision was given to the owner or owners (that date being, where notification was given to owners on different dates, the date on which it was given to the last of them).~~

~~RULE 3—~~

~~MATTERS ON WHICH SCHEME DECISIONS MAY BE MADE~~

Basic scheme decisions

- 3.1 ~~The owners may make a scheme decision on any of the following matters—~~
- ~~(a) to carry out maintenance to scheme property,~~
 - ~~(b) to arrange for an inspection of scheme property to determine whether or to what extent it is necessary to carry out maintenance to the property,~~
 - ~~(c) except where a power conferred by a manager burden (within the meaning of the Title Conditions (Scotland) Act 2003 (asp 9)) is exercisable in relation to the tenement—~~
 - ~~(i) to appoint on such terms as they may determine a person (who may be an owner or a firm) to manage the tenement,~~
 - ~~(ii) to dismiss any manager,~~
 - ~~(d) to delegate to a manager power to exercise such of their powers as they may specify, including, without prejudice to that generality, any power to decide to carry out maintenance and to instruct it,~~
 - ~~(e) to arrange for the tenement a common policy of insurance complying with section 18 of this Act and against such other risks (if any) as the owners may determine and to determine on an equitable basis the liability of each owner to contribute to the premium,~~
 - ~~(f) to install a system enabling entry to the tenement to be controlled from each flat,~~

- ~~(g) to determine that an owner is not required to pay a share (or some part of a share) of such scheme costs as may be specified by them;~~
- ~~(h) to authorise any maintenance of scheme property already carried out;~~
- ~~(i) to modify or revoke any scheme decision.~~

Scheme decisions relating to maintenance

3.2 ~~If the owners make a scheme decision to carry out maintenance to scheme property or if a manager decides, by virtue of a scheme decision, that maintenance needs to be carried out to scheme property, the owners may make a scheme decision on any of the following matters—~~

- ~~(a) to appoint on such terms as they may determine a person (who may be an owner or a firm) to manage the carrying out of the maintenance;~~
- ~~(b) to instruct or arrange for the carrying out of the maintenance;~~
- ~~(c) subject to rule 3.3, to require each owner to deposit—~~
 - ~~(i) by such date as they may decide (being a date not less than 28 days after the requirement is made of that owner); and~~
 - ~~(ii) with such person as they may nominate for the purpose;~~
- ~~a sum of money (being a sum not exceeding that owner's apportioned share of a reasonable estimate of the cost of the maintenance);~~
- ~~(d) to take such other steps as are necessary to ensure that the maintenance is carried out to a satisfactory standard and completed in good time.~~

Scheme decisions under rule 3.2(c) requiring deposits exceeding certain amounts

3.3 ~~A requirement, in pursuance of a scheme decision under rule 3.2(c), that each owner deposit a sum of money—~~

- ~~(a) exceeding £100, or~~
- ~~(b) of £100 or less where the aggregate of that sum taken together with any other sum or sums required (otherwise than by a previous notice under this rule) in the preceding 12 months to be deposited by each owner by virtue any scheme decision under rule 3.2(c) exceeds £200;~~

~~shall be made by written notice to each owner and shall require the sum to be deposited into such account (the “maintenance account”) as the owners may nominate for the purpose.~~

Provision supplementary to rule 3.3

3.4 ~~Where a requirement is, or is to be, made in accordance with rule 3.3—~~

- ~~(a) the owners may make a scheme decision authorising a manager or at least two other persons (whether or not owners) to operate the maintenance account on behalf of the owners;~~

- ~~(b) there must be contained in or attached to the notice to be given under rule 3.3 a note comprising a summary of the nature and extent of the maintenance to be carried out together with the following information—~~
 - ~~(i) the estimated cost of carrying out that maintenance;~~
 - ~~(ii) why the estimate is considered a reasonable estimate;~~
 - ~~(iii) how the sum required from the owner in question and the apportionment among the owners have been arrived at;~~
 - ~~(iv) what the apportioned shares of the other owners are;~~
 - ~~(v) the date on which the decision to carry out the maintenance was made and the names of those by whom it was made;~~
 - ~~(vi) a timetable for the carrying out of the maintenance, including the dates by which it is proposed the maintenance will be commenced and completed;~~
 - ~~(vii) the location and number of the maintenance account, and~~
 - ~~(viii) the names and addresses of the persons who will be authorised to operate that account on behalf of the owners;~~
- ~~(c) the maintenance account to be nominated under rule 3.3 must be a bank or building society account which is interest bearing, and the authority of at least two persons or of a manager on whom has been conferred the right to give authority, must be required for any payment from it;~~
- ~~(d) if a modification or revocation under rule 3.1(i) affects the information contained in the notice or the note referred to in paragraph (b) above, the information must be sent again, modified accordingly, to the owners;~~
- ~~(e) an owner is entitled to inspect, at any reasonable time, any tender received in connection with the maintenance to be carried out;~~
- ~~(f) the notice to be given under rule 3.3 may specify a date as a refund date for the purposes of paragraph (g)(i) below;~~
- ~~(g) if—~~
 - ~~(i) the maintenance is not commenced by—~~
 - ~~((A)) where the notice under rule 3.3 specifies a refund date, that date, or~~
 - ~~((B)) where that notice does not specify such a date, the twenty-eighth day after the proposed date for its commencement as specified in the notice by virtue of paragraph (b)(vi) above, and~~
 - ~~(ii) a depositor demands, by written notice, from the persons authorised under paragraph (a) above repayment (with accrued interest) of such sum as has been deposited by that person in compliance with the scheme decision under rule 3.2(e);~~

~~the depositor is entitled to be repaid accordingly, except that no requirement to make repayment in compliance with a notice under sub-paragraph (ii) arises if the persons so authorised do not receive that notice before the maintenance is commenced;~~

- ~~(h) such sums as are held in the maintenance account by virtue of rule 3.3 are held in trust for all the depositors, for the purpose of being used by the persons authorised to make payments from the account as payment for the maintenance;~~
- ~~(i) any sums held in the maintenance account after all sums payable in respect of the maintenance carried out have been paid shall be shared among the depositors—~~
 - ~~(i) by repaying each depositor, with any accrued interest and after deduction of that person's apportioned share of the actual cost of the maintenance, the sum which the person deposited, or~~
 - ~~(ii) in such other way as the depositors agree in writing.~~

~~*Scheme decisions under rule 3.1(g): votes of persons standing to benefit not to be counted*~~

~~3.5 A vote in favour of a scheme decision under rule 3.1(g) is not to be counted if—~~

- ~~(a) the owner exercising the vote, or~~
- ~~(b) where the vote is exercised by a person nominated by an owner—~~
 - ~~(i) that person, or~~
 - ~~(ii) the owner who nominated that person,~~

~~is the owner or an owner who, by virtue of the decision, would not be required to pay as mentioned in that rule.~~

~~RULE 4—~~

~~SCHEME COSTS: LIABILITY AND APPORTIONMENT~~

~~*Meaning of “scheme costs”*~~

~~4.1 Except in so far as rule 5 applies, this rule provides for the apportionment of liability among the owners for any of the following costs—~~

- ~~(a) any costs arising from any maintenance or inspection of scheme property where the maintenance or inspection is in pursuance of, or authorised by, a scheme decision;~~
- ~~(b) any remuneration payable to a person appointed to manage the carrying out of such maintenance as is mentioned in paragraph (a);~~
- ~~(c) running costs relating to any scheme property (other than costs incurred solely for the benefit of one flat);~~
- ~~(d) any costs recoverable by a local authority in respect of work relating to any scheme property carried out by them by virtue of any enactment;~~
- ~~(e) any remuneration payable to any manager;~~
- ~~(f) the cost of any common insurance to cover the tenement;~~
- ~~(g) the cost of installing a system enabling entry to the tenement to be controlled from each flat;~~

~~(h) any costs relating to the calculation of the floor area of any flat, where such calculation is necessary for the purpose of determining the share of any other costs for which each owner is liable,~~

~~(i) any other costs relating to the management of scheme property,~~

~~and a reference in this scheme to “scheme costs” is a reference to any of the costs mentioned in paragraphs (a) to (i).~~

Maintenance and running costs

4.2 ~~Except as provided in rule 4.3, if any scheme costs mentioned in rule 4.1(a) to (d) relate to—~~

~~(a) the scheme property mentioned in rule 1.2(a), then those costs are shared among the owners in the proportions in which the owners share ownership of that property,~~

~~(b) the scheme property mentioned in rule 1.2(b) or (c), then—~~

~~(i) in any case where the floor area of the largest (or larger) flat is more than one and a half times that of the smallest (or smaller) flat, each owner is liable to contribute towards those costs in the proportion which the floor area of that owner’s flat bears to the total floor area of all (or both) the flats,~~

~~(ii) in any other case, those costs are shared equally among the flats,~~

~~and each owner is liable accordingly.~~

Scheme costs relating to roof over the close

4.3 ~~Where—~~

~~(a) any scheme costs mentioned in rule 4.1(a) to (d) relate to the roof over the close, and~~

~~(b) that roof is common property by virtue of section 3(1)(a) of this Act,~~

~~then, despite the fact that the roof is scheme property mentioned in rule 1.2(a), paragraph (b) of rule 4.2 shall apply for the purpose of apportioning liability for those costs.~~

Insurance premium

4.4 ~~Any scheme costs mentioned in rule 4.1(f) are shared among the flats—~~

~~(a) where the costs relate to common insurance arranged by virtue of rule 3.1(e), in such proportions as may be determined by the owners by virtue of that rule, or~~

~~(b) where the costs relate to common insurance arranged by virtue of a tenement burden, equally,~~

~~and each owner is liable accordingly.~~

Other scheme costs

4.5 ~~Any scheme costs mentioned in rule 4.1(e), (g), (h) or (i) are shared equally among the flats, and each owner is liable accordingly.~~

~~**RULE 5—**~~

~~REDISTRIBUTION OF SHARE OF COSTS~~

- ~~- Where an owner is liable for a share of any scheme costs but—~~
- ~~(a) a scheme decision has been made determining that the share (or a portion of it) should not be paid by that owner, or~~
 - ~~(b) the share cannot be recovered for some other reason such as that—~~
 - ~~(i) the estate of that owner has been sequestrated, or~~
 - ~~(ii) that owner cannot, by reasonable inquiry, be identified or found,~~
- ~~then (unless that share has been paid by the local authority under section 4A) that share must be paid by the other owners who are liable for a share of the same costs (the share being divided equally among the flats of those other owners), but where paragraph (b) applies that owner is liable to each of those other owners for the amount paid by each of them.~~

~~**RULE 6—**~~

~~PROCEDURAL IRREGULARITIES~~

Validity of scheme decisions

- ~~6.1 Any procedural irregularity in the making of a scheme decision does not affect the validity of the decision.~~

Liability for scheme costs where procedural irregularity

- ~~6.2 If any owner is directly affected by a procedural irregularity in the making of a scheme decision and that owner—~~
- ~~(a) was not aware that any scheme costs relating to that decision were being incurred, or~~
 - ~~(b) on becoming aware as mentioned in paragraph (a), immediately objected to the incurring of those costs,~~
- ~~that owner is not liable for any such costs (whether incurred before or after the date of objection), and, for the purposes of determining the share of those scheme costs due by each of the other owners, that owner is left out of account.~~

~~**RULE 7—**~~

~~EMERGENCY WORK~~

Power to instruct or carry out

- ~~7.1 Any owner may instruct or carry out emergency work.~~

Liability for cost

- ~~7.2 The owners are liable for the cost of any emergency work instructed or carried out as if the cost of that work were scheme costs mentioned in rule 4.1(a).~~

Meaning of “emergency work”

- ~~7.3 For the purposes of this rule, “emergency work” means work which, before a scheme decision can be obtained, requires to be carried out to scheme property—~~
- ~~(a) to prevent damage to any part of the tenement, or~~
 - ~~(b) in the interests of health or safety.~~

~~RULE 8—~~

~~ENFORCEMENT~~

Scheme binding on owners

- ~~8.1 This scheme binds the owners.~~

Scheme decision to be binding

- ~~8.2 A scheme decision is binding on the owners and their successors as owners.~~

Enforceability of scheme decisions

- ~~8.3 Any obligation imposed by this scheme or arising from a scheme decision may be enforced by any owner.~~

Enforcement by third party

- ~~8.4 Any person authorised in writing for the purpose by the owner or owners concerned and a local authority entitled to recover costs under section 4A(5) may—~~
- ~~(a) enforce an obligation such as is mentioned in rule 8.3 on behalf of one or more owners, and~~
 - ~~(b) in doing so, may bring any claim or action in that person’s own name.~~

~~RULE 9—~~

~~GIVING OF NOTICE~~

Giving of notice

- ~~9.1 Any notice which requires to be given to an owner under or in connection with this scheme may be given in writing by sending the notice to—~~
- ~~(a) the owner, or~~
 - ~~(b) the owner’s agent.~~

Methods of “sending” for the purposes of rule 9.1

~~9.2 The reference in rule 9.1 to sending a notice is to its being—~~

- ~~(a) posted;~~
- ~~(b) delivered, or~~
- ~~(c) transmitted by electronic means.~~

Giving of notice to owner where owner's name is not known

~~9.3 Where an owner cannot by reasonable inquiry be identified or found, a notice shall be taken for the purposes of rule 9.1(a) to be sent to the owner if it is posted or delivered to the owner's flat addressed to “The Owner” or using some other similar expression such as “The Proprietor”.~~

Day on which notice is to be taken to be given

~~9.4 For the purposes of this scheme—~~

- ~~(a) a notice posted shall be taken to be given on the day of posting, and~~
- ~~(b) a notice transmitted by electronic means shall be taken to be given on the day of transmission.~~

SCHEDULE 2
(introduced by section 12(3))

FORM OF NOTICE OF POTENTIAL LIABILITY FOR COSTS

“NOTICE OF POTENTIAL LIABILITY FOR COSTS

This notice gives details of certain maintenance or work carried out , or to be carried out, in relation to the flat specified in the notice. The effect of the notice is that a person may, on becoming the owner of the flat, be liable by virtue of section 12(3) of the Tenements (Scotland) Act 2004 (asp 11) for any outstanding costs relating to the maintenance or work.

Flat to which notice relates:

(see note 1 below)

Description of the maintenance or work to which notice relates:

(see note 2 below)

Person giving notice:

(see note 3 below)

Signature:

(see note 4 below)

Date of signing: ”

Notes for completion

(These notes are not part of the notice)

- 1 Describe the flat in a way that is sufficient to identify it. Where the flat has a postal address, the description must include that address. Where title to the flat has been registered in the Land Register of Scotland, the description must refer to the title number of the flat or of the larger subjects of which it forms part. Otherwise, the description should normally refer to and identify a deed recorded in a specified division of the Register of Sasines.
- 2 Describe the maintenance or work in general terms.
- 3 Give the name and address of the person applying for registration of the notice (“the applicant”) or the applicant’s name and the name and address of the applicant’s agent.
- 4 The notice must be signed by or on behalf of the applicant.

SCHEDULE 3
(introduced by sections 22(3) and 23(1))

SALE UNDER SECTION 22(3) OR 23(1)

Application to sheriff for power to sell

- 1 (1) Where an owner or tenement owners’ association is entitled to apply—
 - (a) under section 22(3), for power to sell the site; or
 - (b) under section 23(1), for power to sell the tenement building,the owner or (as the case may be) association may make a summary application to the sheriff seeking an order (referred to in this Act as a “power of sale order”) conferring such power on the owner or (as the case may be) association.
 - (2) The site or tenement building in relation to which an application or order is made under sub-paragraph (1) is referred to in this schedule as the “sale subjects”.
 - (3) An owner or association making an application under sub-paragraph (1) shall give notice of it to each of the other owners or (as the case may be) each of the owners of the sale subjects.
- (3A) Where an application under sub-paragraph (1) is made by an owner, the owner must give notice of the application to the tenement owners’ association for the tenement (if any).

- (4) The sheriff shall, on an application under sub-paragraph (1)—
 - (a) grant the power of sale order sought unless satisfied that to do so would—
 - (i) not be in the best interests of all (or both) the owners taken as a group; or
 - (ii) be unfairly prejudicial to one or more of the owners; and
 - (b) if a power of sale order has previously been granted in respect of the same sale subjects, revoke that previous order.
- (5) A power of sale order shall contain—
 - (a) the name and address of the owner or (as the case may be) association in whose favour it is granted;
 - (b) the postal address of each flat or, as the case may be, former flat comprised in the sale subjects to which the order relates; and
 - (c) a sufficient conveyancing description of each of those flats or former flats.
- (6) A description of a flat or former flat is a sufficient conveyancing description for the purposes of sub-paragraph (5)(c) if—
 - (a) where the flat or former flat has been registered in the Land Register of Scotland, the description refers to the number of the title sheet;
 - (b) in relation to any other flat or former flat, the description is by reference to a deed recorded in the Register of Sasines.
- (7) An application under sub-paragraph (1) shall state the applicant's conclusions as to—
 - (a) which of subsections (4) and (5) of section 22 applies for the purpose of determining how the net proceeds of any sale of the sale subjects in pursuance of a power of sale order are to be shared among the owners of those subjects; and
 - (b) if subsection (5) of that section is stated as applying for that purpose—
 - (i) the floor area of each of the flats or former flats comprised in the sale subjects; and
 - (ii) the proportion of the net proceeds of sale allocated to that flat.

Appeal against grant or refusal of power of sale order

- 2 (1) A party may, not later than 14 days after the date of—
 - (a) making of a power of sale order; or
 - (b) an interlocutor refusing an application for such an order,
 appeal to the Court of Session on a point of law.
- (2) The decision of the Court of Session on any such appeal shall be final.

Registration of power of sale order

- 3 (1) A power of sale order has no effect—
 - (a) unless it is registered within the period of 14 days after the relevant day; and

- (b) until the beginning of the forty-second day after the day on which it is so registered.
- (2) In sub-paragraph (1)(a) above, “the relevant day” means, in relation to a power of sale order—
 - (a) the last day of the period of 14 days within which an appeal against the order may be lodged under paragraph 2(1) of this schedule; or
 - (b) if such an appeal is duly lodged, the day on which the appeal is abandoned or determined.

Exercise of power of sale

- 4 (1) An owner or tenement owners’ association in whose favour a power of sale order is granted may exercise the power conferred by the order by private bargain or by exposure to sale.
- (2) However, in either case, the owner or (as the case may be) the association shall—
 - (a) advertise the sale; and
 - (b) take all reasonable steps to ensure that the price at which the sale subjects are sold is the best that can reasonably be obtained.
- (3) In advertising the sale in pursuance of sub-paragraph (2)(a) above, the owner or (as the case may be) association shall, in particular, ensure that there is placed and maintained on the sale subjects a conspicuous sign—
 - (a) advertising the fact that the sale subjects are for sale; and
 - (b) giving the name and contact details of the owner or of any agent acting on the owner’s behalf or (as the case may be) of the association or of any agent acting on the association’s behalf in connection with the sale.
- (4) ~~So far as may be necessary for the purpose of complying with sub-paragraph (3) above, the owner or any person authorised by the owner shall be entitled to enter any part of the sale subjects not owned, or not owned exclusively, by that owner.~~ So far as may be necessary for the purpose of complying with sub-paragraph (3) above—
 - (a) where the power of sale order is granted in favour of an owner, the owner or any person authorised by the owner shall be entitled to enter any part of the sale subjects not owned, or not owned exclusively, by that owner,
 - (b) where the power of sale order is granted in favour of an association, the association or any person authorised by the association is entitled to enter any part of the sale subjects.

Distribution of proceeds of sale

- 5 (1) An owner selling the sale subjects (referred to in this paragraph as the “selling owner”), or a tenement owners’ association selling the sale subjects, shall, within seven days of completion of the sale—
 - (a) calculate each owner’s share; and
 - (b) apply that share in accordance with sub-paragraph (2) below.

- (2) An owner's share shall be applied—
 - (a) first, to repay any amounts due under any heritable security affecting that owner's flat or former flat;
 - (b) next, to defray any expenses properly incurred in complying with paragraph (a) above; and
 - (c) finally, to pay to the owner the remainder (if any) of that owner's share.
- (3) If there is more than one heritable security affecting an owner's flat or former flat, the owner's share shall be applied under paragraph (2)(a) above in relation to each security in the order in which they rank.
- (4) If any owner cannot by reasonable inquiry be identified or found, the selling owner or (as the case may be) association shall consign the remainder of that owner's share in the sheriff court.
- (5) On paying to ~~another owner the remainder of that owner's share, the selling owner~~ an owner ("the recipient") the remainder of that owner's share, the selling owner or (as the case may be) the association shall also give to ~~that other owner~~ the recipient—
 - (a) a written statement showing—
 - (i) the amount of ~~that owner's~~ the recipient's share and of the remainder of it; and
 - (ii) how that share and remainder were calculated; and
 - (b) evidence of—
 - (i) the total amount of the proceeds of sale; and
 - (ii) any expenses properly incurred in connection with the sale and in complying with sub-paragraph (2)(a) above.
- (6) In this paragraph—

“remainder”, in relation to an owner's share, means the amount of that share remaining after complying with sub-paragraph (2)(a) and (b) above;

“share”, in relation to an owner, means the share of the net proceeds of sale to which that owner is entitled in accordance with subsection (4) or, as the case may be, subsection (5) of section 22.

Automatic discharge of heritable securities

6 Where—

- (a) an owner or tenement owners' association—
 - (i) sells the sale subjects in pursuance of a power of sale order; and
 - (ii) grants a disposition of those subjects to the purchaser or the purchaser's nominee; and
- (b) that disposition is duly registered in the Land Register of Scotland or recorded in the Register of Sasines,

all heritable securities affecting the sale subjects or any part of them shall, by virtue of this paragraph, be to that extent discharged.

SCHEDULE 4
(introduced by section 25)

AMENDMENTS OF TITLE CONDITIONS (SCOTLAND) ACT 2003

- 1 The Title Conditions (Scotland) Act 2003 (asp 9) shall be amended as follows.
- 2 In section 3(8)(waiver, mitigation and variation of real burdens), for “the holder” there shall be substituted “a holder”.
- 3 In section 4 (creation of real burdens), in subsection (7), after “sections” there shall be inserted “53(3A),”.
- 4 In section 10 (affirmative burdens: continuing liability of former owner)—
- (a) in subsection (2), at the beginning there shall be inserted “Subject to subsection (2A) below,”;
 - (i) after subsection (2) there shall be inserted—

“(2A) A new owner shall be liable as mentioned in subsection (2) above for any relevant obligation consisting of an obligation to pay a share of costs relating to maintenance or work (other than local authority work) carried out before the acquisition date only if—

 - (a) notice of the maintenance or work—
 - (i) in, or as near as may be in, the form set out in schedule 1A to this Act; and
 - (ii) containing the information required by the notes for completion set out in that schedule,

(such a notice being referred to in this section and section 10A of this Act as a “notice of potential liability for costs”) was registered in relation to the burdened property at least 14 days before the acquisition date; and

 - (b) the notice had not expired before the acquisition date.
- (2B) In subsection (2A) above—
- “acquisition date” means the date on which the new owner acquired right to the burdened property; and
 - “local authority work” means work carried out by a local authority by virtue of any enactment.”; and
- (c) at the end there shall be added—
- “(5) This section does not apply in any case where section 12 of the Tenements (Scotland) Act 2004 (asp 11) applies.”.
- 5 After section 10 there shall be inserted—

“10A Notice of potential liability for costs: further provision

- (1) A notice of potential liability for costs—
 - (a) may be registered in relation to burdened property only on the application of—
 - (i) an owner of the burdened property;
 - (ii) an owner of the benefited property; or
 - (iii) any manager; and
 - (b) shall not be registered unless it is signed by or on behalf of the applicant.
- (2) A notice of potential liability for costs may be registered—
 - (a) in relation to more than one burdened property in respect of the same maintenance or work; and
 - (b) in relation to any one burdened property, in respect of different maintenance or work.
- (3) A notice of potential liability for costs expires at the end of the period of 3 years beginning with the date of its registration, unless it is renewed by being registered again before the end of that period.
- (4) This section applies to a renewed notice of potential liability for costs as it applies to any other such notice.
- (5) The Keeper of the Registers of Scotland shall not be required to investigate or determine whether the information contained in any notice of potential liability for costs submitted for registration is accurate.
- (6) The Scottish Ministers may by order amend schedule 1A to this Act.”

6 In section 11 (affirmative burdens: shared liability), after subsection (3) there shall be inserted—

- “(3A) For the purposes of subsection (3) above, the floor area of a flat is calculated by measuring the total floor area (including the area occupied by any internal wall or other internal dividing structure) within its boundaries; but no account shall be taken of any pertinents or any of the following parts of a flat—
- (a) a balcony; and
 - (b) except where it is used for any purpose other than storage, a loft or basement.”.

7 In section 25 (definition of the expression “community burdens”), in subsection (1)(a), for “four” there shall be substituted “two”.

8 In section 29 (power of majority to instruct common maintenance)—

- (a) in subsection (2)—
 - (i) in paragraph (b)—
 - (A) for the words from the beginning to “that” where it first occurs there shall be substituted “subject to subsection (3A) below, require each”; and

(B) for sub-paragraph (ii) there shall be substituted—

“(ii) with such person as they may nominate for the purpose,”; and

(ii) paragraph (c) shall be omitted;

(b) after subsection (3) there shall be inserted—

“(3A) A requirement under subsection (2)(b) above that each owner deposit a sum of money—

(a) exceeding £100; or

(b) of £100 or less where the aggregate of that sum taken together with any other sum or sums required (otherwise than by a previous notice under this subsection) in the preceding 12 months to be deposited under that subsection by each owner exceeds £200,

shall be made by written notice to each owner and shall require the sum to be deposited into such account (the “maintenance account”) as the owners may nominate for the purpose.

(3B) The owners may authorise a manager or at least two other persons (whether or not owners) to operate the maintenance account on their behalf.”;

(c) in subsection (4), for “(2)(b)” there shall be substituted “(3A)”;

(d) after subsection (6) there shall be inserted—

“(6A) The notice given under subsection (2)(b) above may specify a date as a refund date for the purposes of subsection (7)(b)(i) below.”;

(e) in subsection (7)(b)—

(i) in sub-paragraph (i), for “the fourteenth” there shall be substituted—

(A) where the notice under subsection (2)(b) above specifies a refund date, that date; or

(B) where that notice does not specify such a date, the twenty-eighth”;

(ii) in sub-paragraph (ii), for “(4)(h)” there shall be substituted “(3B)”;

(f) after subsection (7) there shall be inserted—

“(7A) A former owner who, before ceasing to be an owner, deposited sums in compliance with a requirement under subsection (2)(b) above, shall have the same entitlement as an owner has under subsection (7)(b) above.”;

(g) in subsection (8), for “(2)(b)” there shall be substituted “(3A)”;

(h) after subsection (9) there shall be inserted—

“(10) The Scottish Ministers may by order substitute for the sums for the time being specified in subsection (3A) above such other sums as appear to them to be justified by a change in the value of money appearing to them to have occurred since the last occasion on which the sums were fixed.”.

“31A Disapplication of provisions of sections 28, 29 and 31 in certain cases

- (1) Sections 28(1)(a) and (d) and (2)(a), 29 and 31 of this Act shall not apply in relation to a community consisting of one tenement.
 - (2) Sections 28(1)(a) and (d) and 31 of this Act shall not apply to a community in any period during which the development management scheme applies to the community.”.
- 10 In section 33 (majority etc. variation and discharge of community burdens)—
 - (a) in subsection (1)(b), the words “where no such provision is made,” shall be omitted; and
 - (b) in subsection (2)(a), at the beginning there shall be inserted “where no such provision as is mentioned in subsection (1)(a) above is made,”.
- 11 In section 35 (variation and discharge of community burdens by owners of adjacent units), in subsection (1), the words “in a case where no such provision as is mentioned in section 33(1)(a) of this Act is made” shall be omitted.
- 12 In section 43 (rural housing burdens)—
 - (a) in subsection (1), after “burden” where it first occurs there shall be inserted “over rural land”; and
 - (b) in subsection (6), for “on rural land or to provide rural” there shall be substituted “or”.
- 13 In section 45 (economic development burdens), subsection (6) shall be omitted.
- 14 In section 53 (common schemes: related properties), after subsection (3) there shall be inserted—

“(3A) Section 4 of this Act shall apply in relation to any real burden to which subsection (1) above applies as if—

 - (a) in subsection (2), paragraph (c)(ii);
 - (b) subsection (4); and
 - (c) in subsection (5), the words from “and” to the end,

were omitted.”
- 15 In section 90 (powers of Lands Tribunals as respects title conditions), in subsection (8A), for “application” there shall be substituted “disapplication”.
- 16 In section 98 (granting certain applications for variation, discharge, renewal or preservation of title conditions), in paragraph (b)(i), for the words “the owners of all” there shall be substituted “all the owners (taken as a group) of”.
- 17 In section 99 (granting applications as respects development management schemes), in subsection (4)(a), for the words “the owners” there shall be substituted “all the owners (taken as a group)”.
- 18 In section 119 (savings and transitional provision etc.), subsection (9) shall be omitted.
- 19 In section 122(1) (interpretation)—
 - (a) the definition of “flat” shall be omitted;

(b) after the definition of “Lands Tribunal” there shall be inserted—

““local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);” and

(c) for the definition of “tenement” there shall be substituted—

““tenement” has the meaning given by section 26 of the Tenements (Scotland) Act 2004 (asp 11); and references to a flat in a tenement shall be construed accordingly;”.

20 After schedule 1 there shall be inserted—

“SCHEDULE 1A
(introduced by section 10(2A))

Form of notice of potential liability for costs

“Notice of potential liability for costs

This notice gives details of certain maintenance or work carried out in relation the property specified in the notice. The effect of the notice is that a person may, on becoming the owner of the property, be liable by virtue of section 10(2A) of the Title Conditions (Scotland) Act 2003 (asp 9) for any outstanding costs relating to the maintenance or work.

Property to which the notice relates:

(see note 1 below)

Description of the maintenance or work to which notice relates:

(see note 2 below)

Person giving notice:

(see note 3 below)

Signature:

(see note 4 below)

Date of signing:”

Notes for completion

(These notes are not part of the notice)

- 1 Describe the property in a way that is sufficient to identify it. Where the property has a postal address, the description must include that address. Where title to the property has been registered in the Land Register of Scotland, the description must refer to the title number of the property or of the larger subjects of which it forms part. Otherwise, the description should normally refer to and identify a deed recorded in a specified division of the Register of Sasines.
- 2 Describe the maintenance or work in general terms.
- 3 Give the name and address of the person applying for registration of the notice (“the applicant”) or the applicant’s name and the name and address of the applicant’s agent.
- 4 The notice must be signed by or on behalf of the applicant.”