

25 April 2024



Our ref: L/2/6/3

Dear Consultee

**DISCUSSION PAPER ON TENEMENT LAW: COMPULSORY OWNERS' ASSOCIATIONS
SLC DP No 176**

We invite comment on the above mentioned Discussion Paper which has been published today. The paper is available on our website at <https://www.scotlawcom.gov.uk/law-reform/consultations/> together with an Executive Summary and a news release. The paper consults on provisional proposals for the introduction of owners' associations for tenement buildings.

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

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

The Working Group described some key features of the proposed owners' associations as follows:

- The members of the association would be the owners of each of the flats in the tenement;
- The association would have legal personality which would allow it, among other things, to enter into contracts;
- The association would be required to hold an annual meeting, which would prevent absent or apathetic owners holding up repairs;
- The association would have the ability to control an annual repair plan and budget;
- The association would be empowered to delegate certain rights and responsibilities, including the right to pursue non-paying owners, to a manager.

The Discussion Paper which we have now published sets out our provisional proposals for the introduction of owners' associations and a default management scheme, named the Owners' Association Scheme, intended to replace the Tenement Management Scheme currently set out in the first schedule to the Tenements (Scotland) Act 2004. The paper seeks views on these proposals as well as a number of related questions.



The Discussion Paper considers in detail various matters, including:

- The functions, powers and duties of the owners' association, including the role of an association manager.
- How decisions to exercise the powers of the owners' association will be made by members, as well as how these decisions can be challenged.
- The liability of owners for costs, and the implementation of an annual budgeting system.
- Whether the court should be empowered to appoint a manager to run the owners' association where owners have failed to keep it operational.
- Whether any types of tenements should be exempt from the scheme, and how the scheme could be disapplied from a tenement.
- How any new laws made to give effect to the scheme will interact with pre-existing title conditions.

We seek views from consultees on 79 questions, including:

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

Consultation is critical in all of our law reform projects to ensure that the final recommendations contained in our report would, if implemented, result in law which is just, principled, responsive and easy to understand. We would therefore be grateful to receive your views on any or all of the questions in this Discussion Paper. All views will be fully considered and analysed in the course of reaching our final conclusions. The consultation period ends on **1 August 2024**.

Where possible, we would prefer the electronic submission of comments. You can use the electronic response form for this Discussion Paper on our website at: <https://www.scotlawcom.gov.uk/publications/archive/discussion-papers-and-consultative-memoranda/>.

The form has a questionnaire format which allows you to comment (briefly or at length) on any of the paper's questions which interest you. The form can be downloaded and emailed to us at info@scotlawcom.gov.uk, as can comments in other electronic formats.

Alternatively, comments can be emailed to info@scotlawcom.gov.uk. As noted above, the consultation process concludes on 1 August 2024, accordingly, we would be grateful if comments were submitted by then.

Please note that information about this Discussion Paper, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with the 2002 Act. We may also (i) publish responses on our website (either in full or in some other way such as reformatted or summarised); and (ii) attribute comments and publish a list of respondents' names.



More information on the work of the Commission can be found on our website at <https://www.scotlawcom.gov.uk/>. Finally, should you wish to offer any comments on the way in which we conduct our consultation exercises, we would be pleased to hear from you.

Yours faithfully

CHARLES GARLAND
Interim Chief Executive