

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Boundaries and Pertinents

Section 3 – Pertinents

18. *Section 3* deals with the pertinents to tenement buildings. These are the parts of the tenement building which are not within the boundaries of individual flats. The ownership of these parts of the building requires to be apportioned among the various flats. The rules in *section 3* will only apply where provision for ownership is not made in the title deeds or in any other enactment.
19. Under *subsections (1)* and *(2)* the owners of all the flats which obtain access by way of a close or a lift (where the lift allows access to more than one flat) will have a right of common property in the close and lift. Both “close” and “lift” are defined in *section 29(1)*. *Subsection (5)* explains that the rights of common property are held in equal shares.
20. *Subsection (3)* provides for the ownership of land adjoining the tenement building. It sets out that any land pertaining to a tenement building will be owned by the flat or flats nearest to that land or piece of land. This rule does not apply to a path, outside stair or other piece of land that acts as a means of access.
21. *Subsection (4)* deals with any other part of the tenement which is not provided for in *subsections (1) to (3)*. Examples given are a path, outside stair, fire escape, rhone, pipe, flue, conduit, cable, tank or chimney stack.
22. Ownership of these residual parts is allocated according to a service test. Where a part of a tenement serves one flat, under *subsection (4)(a)*, it will be a pertinent of that flat only. Where two or more flats are served by a part, a right of common property in that part will attach as a pertinent to those flats. The shares of common property amongst those owners whose flats are served by the pertinent will be equal, regardless of the extent of service.
23. *Subsection (5)* apportions rights of common property into equal shares, except in the case of a chimney stack. If a chimney stack is considered common property under the provisions of the Act, then shares will be apportioned according to the ratio which the number of flues serving a flat bears to the total number of flues in the stack. “Chimney stack” is defined in *section 29(1)*.