



Tenements (Scotland) Act 2004

2004 asp 11

Repairs: costs and access

17 Access for maintenance and other purposes

- (1) Where an owner 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.

Changes to legislation: There are currently no known outstanding effects for the Tenements (Scotland) Act 2004, Section 17. (See end of Document for details)

- (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.

Modifications etc. (not altering text)

- C1** S. 17 applied (13.7.2018) by [The Tenements \(Scotland\) Act 2004 \(Heating Services\) Regulations 2018 \(S.S.I. 2018/163\)](#), regs. 1, **9(2)** (with reg. 7)
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Commencement Information

- I1** S. 17 in force at 28.11.2004 by [S.S.I. 2004/487](#), **art. 2(1)(c)**

Changes to legislation:

There are currently no known outstanding effects for the Tenements (Scotland) Act 2004, Section 17.