



# Tenements (Scotland) Act 2004

## 2004 asp 11

### *Boundaries and pertinents*

#### **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.

#### **Commencement Information**

**II** S. 3 in force at 28.11.2004 by [S.S.I. 2004/487](#), [art. 2\(1\)\(a\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Tenements (Scotland) Act 2004, Section 3.