



1 August 2024

Scottish Property Federation
Scott House
South St Andrew Street
Edinburgh
EH2 2AZ

T 0131 220 6303

spf@bpf.org.uk

SPF Response to Tenement Law: Compulsory Owners' Associations

The Scottish Property Federation (SPF) is the voice for the real estate industry in Scotland. As a part of the wider British Property Federation, we include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers. Our members build Scotland's workplaces, homes, shops, schools and other facilities and the infrastructure that serves them. Our industry is therefore a c



RESPONSE FORM

DISCUSSION PAPER ON TENEMENT LAW: COMPULSORY OWNERS' ASSOCIATIONS

We hope that by using this form it will be easier for you to respond to the proposals or questions set out in the Discussion Paper. Respondents who wish to address only some of the questions and proposals may do so. The form reproduces the proposals/questions as summarised at the end of the paper and allows you to enter comments in a box after each one. At the end of the form, there is also space for any general comments you may have.

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 HELP SCOTLAND'S REAL ESTATE INDUSTRY GROW AND THRIVE

To see a full list of our members and find out more about our work, visit our website at www.scottishpropertyfederation.org.uk

Registered number:
778293 England

Registered office:
St Albans House
5th Floor, 57-59 Haymarket
London SW1Y 4QX

We may also (i) publish responses on our website (either in full or in some other way such as re-formatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

In order to access any box for comments, press the shortcut key F11 and it will take you to the next box you wish to enter text into. If you are commenting on only a few of the proposals, continue using F11 until you arrive at the box you wish to access. To return to a previous box press Ctrl+Page Up or press Ctrl+Home to return to the beginning of the form.

Please save the completed response form to your own system as a Word document and send it as an email attachment to info@scotlawcom.gov.uk. Comments not on the response form may be submitted via said email address or by using the [general comments form](#) on our website. If you prefer you can send comments by post to the Scottish Law Commission, Parliament House, 11 Parliament Square, Edinburgh EH1 1RQ

Name: David Melhuish, Director, Scottish Property Federation
Organisation: Scottish Property Federation
Address: Scott House 10 South St Andrew Street Edinburgh EH2 2AZ
Email address: spf@bpf.org.uk

Summary of the Questions

1. What information or data do consultees have on the potential economic impact of any option for reform proposed in this Discussion Paper?

(Paragraph 1.35)

Comments on Question 1

«InsertTextHere»

2. Do consultees envisage any non-economic impact arising from the reforms proposed in this Discussion Paper particularly as that may apply to any individual or group characteristics?

(Paragraph 1.35)

Comments on Question 2

«InsertTextHere»

3. (a) Should the OA be subject to the following mandatory duties:
 - (i) To appoint a manager within six months of the position becoming vacant?
 - (ii) To comply with any registration requirement arising under the legislation?
 - (iii) To hold an annual general meeting of members within 12 months of the creation of the OA, and in every 15 months thereafter?
 - (iv) To approve an annual budget?

(b) If not, what changes would you recommend to the mandatory duties suggested above, and/or which additional duties would you propose?

(Paragraph 4.20)

Comments on Question 3

We agree with the outlined mandatory duties.

4. Should provision be made for a remedial management scheme through which mandatory duties on the OA can be enforced?

(Paragraph 4.24)

Comments on Question 4

«InsertTextHere»

5. Should it be possible to appoint a person as a remedial manager only where they are: (i) the owner of a flat in the relevant tenement; or (ii) entered on the Scottish Property Factor Register?

(Paragraph 4.27)

Comments on Question 5

We agree that when owners fail to act, a remedial manager should be appointed, and this could be the owner of a flat in the relevant tenement.

6. Should a court order be required for appointment of a remedial manager? If not, why not?

(Paragraph 4.34)

Comments on Question 6

If a court order is required we would encourage it to be set up as a 'paper process'.

7. If a court order is required for appointment of a remedial manager:
- (a) Should any person with an interest in the effective operation of the OA be entitled to make an application for a remedial manager order?
 - (b) Should the local authority be under a duty to apply for a remedial manager order where: (i) the circumstances are such that an application would likely be granted; and (ii) an application has not been made, nor does it appear likely that one will be made, by any other person?
 - (c) Should a court be empowered to make a remedial manager order where: (i) the OA has failed to adhere to its mandatory duties; and (ii) it is reasonable in all the circumstances of the case?

(Paragraph 4.35)

Comments on Question 7

8. Should the application for a remedial manager order be required to identify the proposed remedial manager and confirm their willingness to act?

(Paragraph 4.36)

Comments on Question 8

Yes, we agree with this.

9. (a) Should the local authority be required to act as remedial manager in circumstances where it has not been possible to identify another candidate?
- (b) If not, who should be appointed in such circumstances instead?
- (c) When acting as the remedial manager of last resort, should the application of the Property Factors (Scotland) Act 2011 to local authorities be suspended? Why or why not?

(Paragraph 4.40)

Comments on Question 9

We do not think local authorities should be required to act as remedial managers even as a last resort due to the burden this would place on them. We are conscious that local authorities are mandated to cover increasingly more responsibilities. Unless sufficient resources are given to councils, then we do not suggest this is a viable option.

10. (a) Should the function of the remedial manager be to support the OA to meet its mandatory duties?
- (b) In order to fulfil this function, should the remedial manager have the same powers and duties as a non-remedial manager? If not, what changes would you suggest?
- (c) Are there circumstances other than the appointment of a (non-remedial) manager which should bring the role of the remedial manager to an end?

(Paragraph 4.43)

Comments on Question 10

«InsertTextHere»

11. Do consultees agree that the rules of the OAS should operate as background law, applicable only where provision in the tenement titles is absent or incomplete?

(Paragraph 4.53)

Comments on Question 11

«InsertTextHere»

12. Following the entry into force of OA legislation, should any deed purporting to create a title condition which would modify the application of the OAS be required to set out in full the amended OAS? If not, why not?

(Paragraph 4.62)

Comments on Question 12

«InsertTextHere»

13. (a) After a fixed period, should legislation disapply existing title conditions to the extent that they modify the application of the OA scheme?
- (b) What should be the duration of the fixed period?
- (c) Should the OA be under a duty to register a preservative deed of conditions on request by any owner, subject to the right of any other owner to challenge this request?
- (d) Should members of the OA be able to take a special majority decision to refuse to register a preservative deed of conditions, subject to the same voting threshold as for registration of a deed of conditions?
- (e) Do you have any other comments on our provisional proposals in relation to standardisation of existing tenement title conditions?

(Paragraph 4.71)

Comments on Question 13

Commenting on 13e - it is important that new building owners have flexibility to have bespoke title conditions which reflect the nature of the building and / or the basis of

relationship with owners. Although it is to have a new set of title conditions that can be adopted potentially over 40 years, it is likely that owners will ignore this until the final deadline. Given this, there is increased potential for owners to have not created their title conditions at all. In this instance, we query, what happens? Our members have suggested that the Act should allow for a default title regime to be imposed by regulations and to be issued at a specified point in time to allow for flexibility.

14. (a) Should the OA be named “The Tenement Owners’ Association of” followed by the address of the tenement building?
- (b) Should the address of the OA be the address of the manager?

(Paragraph 5.11)

Comments on Question 14

We agree to both.

15. Which is the better option for identification of the OA:
- (a) The manager should be placed under a duty to verify the details of the OA on request (option 1)?
- (b) The OA should be subject to a requirement to enter its details in the Land Register within a short period after the OA’s creation (option 2(a))?
- (c) The OA should be subject to a requirement to enter its details in the Land Register within a longer period of the OA’s creation, tied to registration of a standardised deed of conditions where appropriate (option 2(b))?
- (d) No provision for identification of the OA should be made within the legislation introducing the OA scheme?
- (e) An alternative option? If so, please provide details.

(Paragraph 5.23)

Comments on Question 15

«InsertTextHere»

16. (a) Which option do you prefer:

(i) The OA legislation should apply to small tenements, subject to modification or disapplication of inappropriate mandatory duties;

or

(ii) The OA legislation should not apply to small tenements, except where owners of flats in a small tenement “opt in” to the legislation subject to modification or disapplication of inappropriate mandatory duties?

(b) Should a “small tenement” be defined as a tenement building of three flats or fewer? If not how should a “small tenement” be defined and why?

(Paragraph 5.34)

Comments on Question 16

«InsertTextHere»

17. (a) Which option do you prefer:

(i) The OA legislation should apply to tenements in single ownership, subject to modification or disapplication of inappropriate mandatory duties;

or

(ii) The OA legislation should not apply to tenements in single ownership, except where the owner “opts in” to the legislation subject to modification or disapplication of inappropriate mandatory duties?

(Paragraph 5.36)

Comments on Question 17

«InsertTextHere»

18. Where a tenement is managed as part of a wider development, should the mandatory duties imposed on the OA be satisfied where they have been met for the development as a whole, rather than for the tenement in particular?

(Paragraph 5.40)

Comments on Question 18

19. Should the OA legislation be disapplied from tenements subject to a DMS?

(Paragraph 5.43)

Comments on Question 19

We would support disapplication of mandatory duties if the tenement were already under a Development Management Scheme to avoid disrupting any previous arrangements.

20. Are there other circumstances in which the OA legislation should be disapplied, or its application modified, in relation to particular categories of tenement? If so, please provide details.

(Paragraph 5.45)

Comments on Question 20

«InsertTextHere»

21. (a) Should the OA be a bespoke body corporate created in any new legislation?

(b) If not, what form should the OA take?

(Paragraph 6.17)

Comments on Question 21

«InsertTextHere»

22. Should legislation provide that an OA is created:

(a) For tenements completed prior to the introduction of the OA legislation, on the date when the relevant provisions of the OA legislation are brought into force?

(b) For tenements completed following the entry into force of the relevant provisions of the OA legislation, on the date when the building completion certificate is approved?

(Paragraph 6.21)

Comments on Question 22

«InsertTextHere»

23. (a) Should the members of the OA be the registered owners, unregistered holders and heritable creditors in possession of flats in the tenement?
- (b) Do you have any comments on the position of non-owner occupiers of flats in the tenement?

(Paragraph 6.28)

Comments on Question 23

It must be noted that tenants do not bear the same financial liability as the owners and so may advocate for changes in the OA without considering the complexity or financial costs that may be required. That said, we agree with the SLC's comments at 6.25 – 6.27 to the extent at which tenants may want some involvement in the management of common areas. This could be specified in their lease (i.e., a requirement for the landlord to consult tenant on certain things).

24. (a) Should the “scheme property” to be managed by the OA be defined in the same way as “scheme property” in the TMS?
- (b) If not, what changes would you suggest?

(Paragraph 6.36)

Comments on Question 24

«InsertTextHere»

25. (a) Should the manager be under a duty to maintain a list of names and contact details of members of the OA?
- (b) Should members of the OA be under a duty to provide the first manager with their name and contact details within three months of the manager's appointment, and to inform the manager of any. Changes to their name and contact details within one month of their occurrence?

- (c) Should a member, on disposal of their flat, be obliged to notify the manager of (i) any change to their contact details; (ii) the name and contact details of the new owner; (iii) the name and address of the agent acting for the new owner; (iv) the date on which the new owner will be entitled to take entry?
- (d) Should a member of the OA be entitled to obtain the name and contact details of another member or members where necessary in connection with the management and maintenance of the building or the operation of the OA?

(Paragraph 6.39)

Comments on Question 25

«InsertTextHere»

26. Should the manager have power to sign documents and execute deeds on behalf of the OA?

(Paragraph 6.41)

Comments on Question 26

«InsertTextHere»

27. Where the OA regime requires information to be sent:
- (a) Should it be competent to send by post, by delivery or by any reasonable electronic means used by the recipient in connection with the business of the OA in the previous year?
- (b) Should sending information to the agent of a member be deemed to meet any requirement to send it to the member?
- (c) Where a member cannot be identified or found after reasonable enquiry, should it suffice to send information to the flat they own in the tenement addressed to “the owner” or equivalent term?

(Paragraph 6.45)

Comments on Question 27

«InsertTextHere»

28. Do you agree that OAs should be excluded from the definition of “property factor” in the Property Factors (Scotland) Act 2011? If not, why not?

(Paragraph 6.49)

Comments on Question 28

«InsertTextHere»

29. (a) Should the function of the OA be to manage the tenement for the benefit of members?
- (b) Should the OA have the general power to do anything necessary in connection with that function?
- (c) If you answered “no” to (a) or (b) above, what alternative would you suggest?

(Paragraph 7.9)

Comments on Question 29

«InsertTextHere»

30. In the OAS:
- (a) Should the general power of the OA be supplemented by a non-exhaustive list of specific powers which it may wish to exercise?
- (b) If a non-exhaustive list is provided, should it include the list of key powers set out in paragraph 7.10? If not, what changes or additions to this list would you suggest?

(Paragraph 7.14)

Comments on Question 30

«InsertTextHere»

31. In legislation introducing the OA regime:
- (a) Should maintenance be defined to include: (i) any work to scheme property required to comply with the duty currently set out in section 8 of the 2004 Act; and (ii) routine maintenance as currently defined by TMS r 1.5?

(b) Are any other changes to “maintenance” as defined in TMS r 1.5 required? If so, what changes are required and why?

(Paragraph 7.19)

Comments on Question 31

«InsertTextHere»

32. Should the non-exhaustive list of powers exercisable by the OA include:

(a) The power to instruct demolition of all or part of the tenement building?

(b) The power to seek approval from the court for sale of the demolition site and distribution of the proceeds as regulated by the 2004 Act s 22?

(c) The power to seek approval from the court for sale of an abandoned tenement building and distribution of the proceeds as regulated by the 2004 Act s 23?

(Paragraph 7.24)

Comments on Question 32

«InsertTextHere»

33. Should the non-exhaustive list of powers exercisable by the OA include the power to execute a deed modifying the application of the OA legislation to the tenement, including execution of a DMS deed of application?

(Paragraph 7.26)

Comments on Question 33

«InsertTextHere»

34. Should an OA be prohibited from carrying on a trade, whether for profit or not?

(Paragraph 7.29)

Comments on Question 34

«InsertTextHere»

35. (a) Should the OA be capable of owning parts of the tenement (including garden ground forming part of the tenement plot)? Why or why not?
- (b) If an OA is capable of owning parts of the tenement, should there be any limitations on which parts of a tenement can be owned? If so, which limitations should be in place, and why?

(Paragraph 7.36)

Comments on Question 35

«InsertTextHere»

36. Should an OA be capable of owning heritable property which is not part of the tenement? Why or why not?

(Paragraph 7.38)

Comments on Question 36

«InsertTextHere»

37. Should there be a strict link between allocation of voting rights and allocation of liability for costs within the OAS? Why or why not?

(Paragraph 8.15)

Comments on Question 37

We do not think there should be a strict connection between voting rights and allocation costs. Usually, a commercial unit owner has a higher percentage of liability for common building areas and a higher percentage of voting rights for decisions. That said, these percentages do not have to match – it should depend on the nature of the building and its units. As a result, linking the two would be inappropriate.

38. In the OAS:

- (a) Should each flat be allocated one vote?
- (b) Is any special rule needed for situations where the number of flats in the building changes, and if so, what?

(Paragraph 8.19)

Comments on Question 38

«InsertTextHere»

39. In the OAS:

- (a) Should decisions to exercise the powers of the OA generally be taken by a simple majority of votes allocated? If not, what alternative threshold do you suggest?
- (b) Where votes are tied, so that 50% of votes are in favour of a decision, should that be sufficient to allow the decision to be made?
- (c) Should decisions which require a special majority be taken by 75% of votes allocated? If not, what alternative threshold do you suggest?
- (d) Which decisions should require a special majority?
- (e) Where a special majority decision relates to a part of the tenement not in common ownership, should the owner's consent to the decision be required?
- (f) Should unanimity be required for a decision to demolish the tenement?

(Paragraph 8.34)

Comments on Question 39

«InsertTextHere»

40. In the OAS:

- (a) Should the owner or any person nominated by the owner be able to cast a vote?

- (b) Where the owner wishes to nominate a person to act on their behalf, should that nomination require to be in writing?
- (c) Where a flat is co-owned, should a majority of co-owners be entitled to cast the vote for that flat?

(Paragraph 8.38)

Comments on Question 40

«InsertTextHere»

41. In the OAS:

- (a) Should the manager have a duty to call the annual general meeting?
- (b) Should the manager have a duty to call any other general meeting when required to do so by owners having not less than 25% of the voting allocation in the tenement?
- (c) Should the manager have the power to call a general meeting at any time?
- (d) Should any member have the power to call a general meeting where the manager has failed to do so, or where there is no manager?
- (e) Should any member have the power to call a meeting in other circumstances, and if so, which circumstances?

(Paragraph 8.46)

Comments on Question 41

«InsertTextHere»

42. In the OAS, to call a general meeting:

- (a) Should the person calling it be required to send a notice to each member and the manager specifying the date, time, location and intended business of the meeting?
- (b) Should the notice require to be sent at least 14 days prior to the intended date of the meeting?

(Paragraph 8.46)

Comments on Question 42

«InsertTextHere»

43. In the OAS:

- (a) Should a quorum be required for a meeting of members?
- (b) If so, why, and what quorum would be appropriate?

(Paragraph 8.49)

Comments on Question 43

«InsertTextHere»

44. In the OAS, where a meeting of members is called:

- (a) Should the manager have a responsibility to support virtual attendance?
- (b) Should members be required to elect a convenor from amongst their number to run the meeting?
- (c) Should the manager have a responsibility to keep a record of decisions taken at the meeting, and to send that record to all members following the meeting?

(Paragraph 8.54)

Comments on Question 44

«InsertTextHere»

45. In the OAS:

- (a) Should there be a rule as to how votes can be cast at meetings?
- (b) If so, what should that rule be?

(Paragraph 8.57)

Comments on Question 45

«InsertTextHere»

46. In the OAS:

- (a) Should it be possible for decisions to be taken by consultation?
- (b) If decision making by consultation is possible, should it be possible for consultation to be undertaken by (i) any owner and (ii) the manager?
- (c) If decision making by consultation is possible, should the scheme set out rules on how that consultation must occur? If so, what rules would be appropriate?
- (d) If decision making by consultation is possible, should consultation with one co-owner be sufficient to count a vote for a co-owned flat?
- (e) If decision making by consultation is possible, should the person who undertook the consultation be responsible for counting the votes and notifying all owners of the outcome as soon as practicable, or instructing the manager to do so?

(Paragraph 8.62)

Comments on Question 46

«InsertTextHere»

47. In the OAS:

- (a) Should it be provided that any procedural irregularity in the making of a scheme decision does not affect the validity of the decision?
- (b) Where an owner directly affected by procedural irregularity in the making of a decision is not aware that costs have been incurred (or objects immediately to the costs), should it be provided that that owner is not liable for the costs, with their share redistributed amongst the other owners?

(Paragraph 8.64)

Comments on Question 47

«InsertTextHere»

48. In the OAS, should an owner (or group of owners) with liability for 75% or more of the costs resulting from a decision have the power to annul that decision by sending notification to the other owners and the manager?

(Paragraph 8.66)

Comments on Question 48

As per our response to question 38, where we outlined that commercial unit owners tend to have a higher percentage liability for common building areas, we agree with this proposal.

49. In the mandatory provisions of the OA legislation:

(a) Should the court have the power to annul a majority decision taken by members to exercise the powers of the OA?

(b) Should the court have the power to order the exercise of the powers of the OA where the required majority has not been achieved?

(b) Should the court have power to make an order only where the decision being challenged is not in the best interests of all members or where it would be unfairly prejudicial to one or more members?

(c) What factors, if any, should the court be required to take into account in deciding whether to grant a relevant order?

(Paragraph 8.76)

Comments on Question 49

«InsertTextHere»

50. In the OAS, should a decision taken by members be binding on owners and their successors as owners?

(Paragraph 8.78)

Comments on Question 50

«InsertTextHere»

51. In the OAS:

- (a) Should provision be made for members to carry out emergency work to scheme property?
- (b) If so, should emergency work be defined as under the TMS?

(Paragraph 8.80)

Comments on Question 51

«InsertTextHere»

52. In the OAS:

- (a) Should the manager require to be a registered property factor?
- (b) Should eligibility to act as manager be subject to any other qualifications?

(Paragraph 9.19)

Comments on Question 52

«InsertTextHere»

- 53 (a) Where a member of an OA acts as the manager of that OA, should they be considered to be “acting in the course of their business” within the meaning of section 2(1) of the Property Factors (Scotland) Act 2011 *solely* because they are in receipt of a moderate benefit for that work?
- (b) Do you have any comments on how “moderate benefit” might be defined in this context?

(Paragraph 9.24)

Comments on Question 53

«InsertTextHere»

54. In the OAS:

(a) Should the manager and a member acting on behalf of the OA be required to sign a certificate confirming the manager's appointment?

(b) Should the certificate require to be signed within one month of the manager's appointment?

(Paragraph 9.28)

Comments on Question 54

«InsertTextHere»

55. (a) In the OAS, should the manager:

(i) Be designated an agent of the OA?

(ii) Have capacity to exercise any of the powers available to the OA?

(iii) Have a duty to manage the tenement for the benefit of members?

(b) If you answered no to any part of the question above, what are the reasons for your answer?

(Paragraph 9.34)

Comments on Question 55

«InsertTextHere»

56. In the OAS:

(a) Should the general duty of the manager be supplemented by a non-exhaustive list of specific duties?

(b) If a non-exhaustive list is provided, which duties should it include?

(Paragraph 9.39)

Comments on Question 56

«InsertTextHere»

57. In the OAS, should duties on the manager of the OA be owed to the OA itself and to members?

(Paragraph 9.41)

Comments on Question 57

«InsertTextHere»

58. (a) Does the OA legislation require any provision to deal with circumstances in which the manager purports to act beyond their authority?

(b) If so, what provision is required?

(Paragraph 9.49)

Comments on Question 58

«InsertTextHere»

59. In the OAS:

(a) Should the rules on liability for costs replicate the rules on liability for costs in the TMS?

(b) If not, how should liability for costs be allocated?

(Paragraph 10.15)

Comments on Question 59

«InsertTextHere»

60. In the OAS:

(a) Should members have the power to exempt an owner, in whole or in part, from liability for a share of costs which would otherwise be due?

(b) If so, should the vote of any owner who stands to benefit not be counted in making the decision?

(Paragraph 10.17)

Comments on Question 60

«InsertTextHere»

61. In the OAS:

(a) Should liability for exempt or missing shares of costs be redistributed equally amongst other owners liable for the same costs, subject to a right of relief where the share is missing (but not where the share is exempt)?

(b) If not, what alternative rule should apply?

(Paragraph 10.21)

Comments on Question 61

«InsertTextHere»

62. Are any changes to sections 11-15 of the Tenements (Scotland) Act 2004 required by the introduction of the OA regime?

(Paragraph 10.24)

Comments on Question 62

«InsertTextHere»

63. In the OAS:

(a) Should the budgeting system be based on the system used in the DMS?

(b) If not, what alternative system would you propose?

(Paragraph 10.39)

Comments on Question 63

«InsertTextHere»

64. If the DMS budgeting system is adopted for the OAS:

- (a) Should the draft budget be required to include details of the works intended to be carried out, the estimated cost of each work and how the estimate was arrived at, and the timeline for completion of works?
- (b) Should any surplus service charge payments be returned to owners or remain available to the OA for work the following year?
- (c) Are any other changes required to adapt the DMS system for the OAS?

(Paragraph 10.39)

Comments on Question 64

«InsertTextHere»

65. In the OAS:

- (a) Should there be provisions on treatment of funds equivalent to those in the DMS?
- (b) If not, what changes or additions to the DMS provisions would you suggest?

(Paragraph 10.43)

Comments on Question 65

«InsertTextHere»

66. (a) Should section 8 of the 2004 Act be amended to include a duty on owners to maintain any part of the tenement which they own so as to prevent damage to any part of the tenement, or in the interests of health and safety?
- (b) If not, why not?

(Paragraph 11.12)

Comments on Question 66

«InsertTextHere»

67. (a) Should legislation include a non-exhaustive list of works covered by the duty on owners under section 8 of the 2004 Act? Why or why not?

(b) If legislation were to include such a non-exhaustive list, what works should be included in the list?

(Paragraph 11.15)

Comments on Question 67

«InsertTextHere»

68. (a) In the OA legislation, should each owner continue to have an individual right of enforcement in relation to obligations owed to them by other owners under the 2004 Act or under the management scheme applicable to the tenement?

(b) In the OAS, should the manager have the right to enforce any obligation owed to one owner by another under the 2004 Act or under the management scheme applicable to the tenement?

(c) In the OAS, should the manager have a duty to enforce any obligation owed to one owner by another under the 2004 Act or under the management scheme applicable to the tenement where reasonable to do so?

(Paragraph 11.27)

Comments on Question 68

«InsertTextHere»

69. In the OA scheme, should each owner have an individual right of enforcement in relation to the obligations owed by the manager to the OA?

(Paragraph 11.31)

Comments on Question 69

«InsertTextHere»

70. Should enforcement action in relation to obligations arising under the 2004 Act or the management scheme applicable to the tenement be dealt with by summary application to the sheriff court or by application to the Housing and Property Chamber of the First-tier Tribunal? Please give reasons for your answer.

(Paragraph 11.40)

Comments on Question 70

«InsertTextHere»

71. (a) Should a court or tribunal dealing with an application to enforce an obligation arising under the 2004 Act or the management scheme in place in the tenement have power to refer the matter for mediation if appropriate in all the circumstances of the case?
- (b) Should a court or tribunal dealing with an application to enforce an obligation arising under the 2004 Act or the management scheme in place in the tenement have discretion to take into account any attempts by any party to the case to engage with an alternative dispute resolution process when determining any award of expenses?
- (c) Do you have any other comments about the use of alternative dispute resolution processes in the context of tenement maintenance disputes?

(Paragraph 11.45)

Comments on Question 71

«InsertTextHere»

72. Should the manager be entitled to seek authority from the court for a budget for works required for compliance by owners with their duties under section 8 of the 2004 Act?

(Paragraph 11.48)

Comments on Question 72

«InsertTextHere»

73. (a) Should the provisions on the diligence of land attachment be brought into force, subject to the restriction that it can be used only by an OA in relation to heritable property forming part of a tenement in connection with debts owed in relation to maintenance of that tenement?
- (b) Should the power to sell attached property be excluded where the property in question is used as a family home as defined in section 98 of the Bankruptcy and Diligence etc. (Scotland) Act 2007?

(Paragraph 11.55)

Comments on Question 73

«InsertTextHere»

74. (a) Where proceedings against an OA by a third party have proved ineffective:
- (b) Should the third party have a direct right of recourse against the members?
- (c) Should the right of the third party be limited to each member's individual share of money owed?
- (d) Should a third party enforcing directly against members be entitled to levy a service charge as if the third party was the manager of the OA?

(Paragraph 11.63)

Comments on Question 74

«InsertTextHere»

75. Which insolvency process (or processes) should be available to an OA?

(Paragraph 12.16)

Comments on Question 75

«InsertTextHere»

76. Should the OA legislation provide that the process of terminating an OA begins automatically when the regime is disapplied from a tenement or plot of land through registration of a relevant deed or notice in the Land Register?

(Paragraph 13.4)

Comments on Question 76

«InsertTextHere»

77. In the OAS, following registration of a deed or notice disapplying the OA regime to a tenement or plot of land, should the manager have a duty to:
- (a) Use any association funds to pay any debts of the association, then distribute any remaining funds to flat owners?

- (b) Prepare the final accounts of the association and send a copy to each flat owner no later than six months after the commencement of the winding up?
- (c) Take on any further responsibilities, and if so, what?

(Paragraph 13.9)

Comments on Question 77

«InsertTextHere»

78. In the OAS, what provision should be made for the distribution of funds to members during the winding up process?

(Paragraph 13.13)

Comments on Question 78

«InsertTextHere»

79. (a) In the OA legislation, should an OA be deemed dissolved six months after registration of the deed commencing the termination process?

- (b) Should members be permitted to postpone dissolution for a specified period beyond that date should they so wish?

(Paragraph 13.16)

Comments on Question 79

«InsertTextHere»

General Comments

In general, we welcome the legislation to enable common repairs to be coordinated and acted upon in buildings with divided ownership. This approach is not dissimilar from England, where buildings with split ownership typically employ a leasehold ownership structure for different parts of the building and where a management company tends to oversee the common areas. Generally, owners in England are accustomed to the idea their ownership includes an interest in a separate entity responsible for maintaining the building.



Thank you for taking the time to respond to this Discussion Paper. Your comments are appreciated and will be taken into consideration when preparing a report containing our final recommendations.

WE HELP SCOTLAND'S REAL ESTATE INDUSTRY GROW AND THRIVE

To see a full list of our members and find out more about our work, visit our website at www.scottishpropertyfederation.org.uk

Registered number:
778293 England

Registered office:
St Albans House
5th Floor, 57-59 Haymarket
London SW1Y 4QX