



Guidance for owners on the installation of solar panels, heat pumps or insulation in common parts of tenements in Scotland

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| Contents

SECTION 01.

Titles

Pg. 1

SECTION 02.

Consents required for solar panels, insulation + heat pumps

Pg. 6

SECTION 03.

Agreements for solar panels, insulation + heat pumps

Pg. 11

SECTION 04.

Matters that agreements will generally require to cover for solar panels, insulation + heat pumps

Pg. 15

SECTION 05.

Establishing an owners' association or body corporate

Pg. 16

SECTION 06.

Case study

Pg. 19

Introduction

This guidance note is intended to provide guidance to owners of tenement property in Scotland who may wish to install solar panels, heat pumps or insulation in or on parts of the building which are owned, used, accessed or maintained by more than one owner.

This guidance was commissioned by Local Energy Scotland. It is written by Harper MacLeod in consultation with Local Energy Scotland, Loco Home Retrofit CIC and Under One Roof. It was prepared in March 2025.

SECTION 01.

Titles

1.1

WHAT IS A 'TENEMENT'?

In Scottish property law, there are several types of properties, each with distinct characteristics and legal considerations. This guidance note is only aimed at owners of flats or units within tenements.

Tenements are buildings divided horizontally into two or more flats, which are owned separately.

Traditional tenements are often multi-storey sandstone or granite buildings with flats on each floor, but the definition also includes large houses which have been converted into flats, high rise blocks, "four in a block" and modern apartment blocks.

Most tenement property is residential (although even in those cases there are very commonly shops on the ground floor), but the legal definition also includes commercial properties, such as office blocks.

Ownership and maintenance responsibilities relating to shared parts of a tenement are typically governed by the titles and by the Tenements (Scotland) Act 2004.

1.2

TITLE CONSIDERATIONS FOR INSTALLING SOLAR PANELS, INSULATION OR HEAT PUMPS IN TENEMENTS

1.2.1

Before agreeing to the installation of solar panels, insulation or heat pumps, owners will need to consider the following:

- On which parts of the property will the solar panels, insulation and/or heat pumps be installed?
- Will the insulation significantly extend the thickness of the wall to the extent that it extends beyond the title boundary to the tenement, into neighbouring property?
- Where will access be required for work to take place for the installation of panels, heat pump infrastructure, cable connection, and connection to the grid?
- What access rights are required to undertake the installation works and future maintenance, repair and replacement?
- Who owns the affected parts of the property and required access routes – are they owned by one owner or are they shared between two or more owners?
- Do the titles contain the necessary rights of access for the installation works and future maintenance, repair and replacement?
- Who will be responsible for the future maintenance of the solar panels, insulation and/or heat pump, including the relevant infrastructure / connections and the costs of the same?
- What happens when ownership of flats change – what rights and obligations pass to the new owners in terms of the titles?
- Are the affected titles secured to a lender? If so, then the lender may need consent and/or release property from their security.

1.2.2

In tenements, the roof and other common parts of the building are typically owned jointly by all the flat owners. In some tenement titles, the roof and other parts of the tenement (such as the attic space below the roof) may be owned by the owners of only one flat. There may also be shared garden ground, areas of hard-standing, paths and stairs surrounding a tenement building, or some areas could be owned solely by one of the flats (typically the ground floor flat(s)). This means that any installation affecting these common parts likely requires the unanimous consent of all co-owners. One or more owners may also require to grant access rights over parts of the building which they own.

1.2.3

It is important for owners to refer to the titles to their flat and other flats within the tenement to clarify: who owns what parts of the tenement; who is responsible for maintaining the relevant parts; what rules apply in relation to decision-making and undertaking works affecting common parts of the tenement; and whether there are any title conditions that permit, restrict or prohibit what they are proposing to do.

Below is a brief overview of what to look out for when checking titles. However, we would recommend seeking legal advice and support from a solicitor at an early stage.

1.3

LAND REGISTER VS SASINE REGISTER

The title to your property may be registered in either the Land Register of Scotland or the General Register of Sasines (the Sasine Register). In Scotland, the **Land Register** and the **Sasine Register** are two separate systems used to record property ownership and interests, but they differ in terms of their structure and the level of detail they provide.

1.3.1

Land Register:

- This is the more modern system, introduced in 1981.
- It is a **map-based system** where land ownership and rights are recorded in a clear and comprehensive way on the 'cadastral map' (based on the Ordnance Survey map).
- Each property is identified with a unique title number, based on the old counties in which the property is situated, e.g. GLA12345.
- A Land Register title is comprised of a title sheet and a title plan – which must be read together.
- The Land Register is designed to provide a definitive, accurate record of ownership and is easier to search and update.

1.3.2

Sasine Register:

- This is the older system, established in 1617 and still in use for properties that have not yet been transferred to the Land Register.
- It is a **deed-based system**, meaning that ownership is recorded based on the deeds (documents, such as dispositions) related to a property.
- The Sasine Register includes a record of the documents that transfer property or create rights in land, but it can be more difficult to trace ownership and rights compared to the Land Register.

1.4

HOW TO FIND YOUR TITLE

Your solicitor should have given you a copy of your title when you purchased your property. If you purchased your property recently then this may be an electronic copy of your Land Register title sheet and plan in an email. Your solicitor or your mortgage lender may hold your original Sasine title deeds. If you do not have a copy of your title, copies are available (for a fee) from Registers of Scotland. You may need assistance from a solicitor to obtain copies of Sasine titles.

1.5

UNDERSTANDING LAND REGISTER TITLE SHEETS AND PLANS

Each Land Register title sheet is accompanied by a title plan and is split into 4 sections:

SECTION A PROPERTY

This section describes the property itself, including a description of the land, its boundaries, and the title plan that visually identifies the property on a map.

SECTION B PROPRIETORSHIP

This section identifies the current owner(s) of the property and includes details of the proprietor's name(s) and the nature of their ownership (e.g. sole or joint ownership).

SECTION C SECURITIES

This section records any securities or mortgages that have been registered against the property, including details of the lender and any outstanding financial obligations secured against the property.

SECTION D BURDENS

This section lists any burdens, rights, or restrictions that affect the property, such as deeds of conditions, servitudes, or planning obligations, which might affect how the property can be used or transferred.

TITLE PLANS

The title plan provides a visual representation of the property's boundaries and its location. It forms an important part in interpreting a Land Register title and must be read in conjunction with the title sheet. The title plan supports the property description in Section A of the title sheet. The title plan may include various colours, letters, and symbols to denote specific details which are explained in the title sheet.

SUPPLEMENTARY PLANS

There can often be supplementary data plans that form part of a Land Register title. Supplementary plans are additional plans that provide detailed information about specific aspects of a property that cannot be fully represented on the main title plan. These can include intricate boundary details, floor levels in multi-storey buildings, or specific areas subject to rights or restrictions.

1.6

UNDERSTANDING SASINE DEEDS

The Sasine Register records property transactions in a chronological order based on written descriptions of properties. The Sasine Register includes details of all deeds related to a property, such as transfers of ownership, securities / mortgages, and other legal transactions, including deeds of conditions and servitudes.

Reading Sasine titles can be a complex task due to their historical and legal nature. Here are some key points to help you understand them:

CHRONOLOGICAL ORDER

Sasine titles are recorded in the order they were registered, not by property. This means you may need to trace back through multiple entries to get a complete history of a property.

WRITTEN DESCRIPTIONS

Unlike Land Register titles, Sasine titles use detailed written descriptions to define property boundaries and locations. These descriptions often reference natural landmarks, neighbouring properties, and historical names. If there are plans attached to deeds then these can be read alongside the written description, but older plans may only have been saved as black and white copies rather than colour, which can make them hard to interpret.

LEGAL LANGUAGE

The titles are written in formal legal language, which can be challenging to interpret. Common terms include "feu" (a historical type of land tenure), "disposition" (a deed transferring ownership), and "sasine" (the act of giving legal possession of property).

DEEDS + INSTRUMENTS

Each entry in the Sasine Register includes various deeds and instruments, such as mortgages, transfers, and other legal documents. Understanding the context and purpose of these documents is crucial.

CONSULTING EXPERTS

Given the complexity, it's often helpful to consult a solicitor or a professional experienced in Scottish property law to accurately interpret Sasine titles.

1.7

UNDER ONE ROOF – TITLE DEEDS TOOLKIT

For more information on understanding title deeds, check out Under One Roof's title deeds toolkit at:

<https://underoneroof.scot/management/property-rules-and-titles/>

[CLICK HERE TO VIEW >](#)

1.8

TENEMENTS (SCOTLAND) ACT 2004

If your titles are silent on a particular matter, or if what the titles say is not workable (for example, if the burdens in the titles to various flats in a tenement are not consistent and conflict with each other), then the Tenements (Scotland) Act 2004 provides default rules for the ownership, management and maintenance of tenements. Here are the key areas the 2004 Act covers:

BOUNDARIES + PERTINENTS

The 2004 Act defines the boundaries of tenement properties and clarifies the ownership of pertinent parts, such as roofs, walls, and common areas where the titles do not say anything or are unworkable.

TENEMENT MANAGEMENT SCHEME (TMS)

The Act introduces a default management scheme that outlines the responsibilities of owners for maintenance and repairs. This includes decision-making processes, cost-sharing arrangements, and procedures for carrying out necessary work.

The TMS only applies to the extent that the titles are silent or unworkable on specific matters. This means that if the titles already provide clear and workable provisions for the management and maintenance of the property, those provisions take precedence.

SUPPORT + SHELTER

The 2004 Act imposes a duty on owners to maintain those parts of their property that provide support or shelter to other parts of the building. It also prohibits actions that would impair this support or shelter.

INSURANCE

Owners are required to insure their property against prescribed risks, ensuring that adequate coverage is in place for the whole building.

INSTALLATION OF SERVICE PIPES

The 2004 Act allows for the installation of service pipes and other necessary infrastructure, ensuring that all owners have access to essential services.

1.9

MAINTENANCE VS IMPROVEMENT

When considering the installation of solar panels, insulation and/or heat pumps, one of the key considerations from a legal perspective is whether this work is 'maintenance' or an 'improvement'.

Maintenance refers to work that keeps the property in its existing state and ensures it continues to function as intended. This includes routine repairs and upkeep, such as fixing a broken roof tile or servicing a heating system. "Maintenance" can include replacement work in some circumstances – for example, if an existing heating system is beyond further repair, then removing it and installing a new system can still be seen as "maintenance". Despite this, the 2004 Act specifically provides that the installation of insulation is legally classified as 'maintenance', even though it may not be considered maintenance in practical terms.

Improvements, on the other hand, are generally considered to be enhancements or additions to the property that go beyond routine maintenance or repairs. Examples include installing new facilities, upgrading existing structures, or adding new features that were not part of the original construction.

Installing solar panels or heat pumps at a property for the first time typically falls under the category of improvements, as these installations enhance the property's energy efficiency and may increase its market value. Understanding this distinction is crucial because it affects legal responsibilities, cost-sharing arrangements, and potential planning permissions required for the work.

More information on 'Maintenance or Improvement' is available on Under One Roof's website at:

<https://underoneroof.scot/maintenance-or-improvement/>

[CLICK HERE TO VIEW >](#)

1.10

CHECKING TITLE BURDENS

If your title is registered in the **Land Register**, it is essential to review the burdens in Section D of the title sheet. Section D may contain restrictions or requirements related to making improvements to the property. The burdens may include specific permissions needed or limitations on the type of improvements allowed. Additionally, Section D might outline the process for making decisions about improvements to shared property and could delegate such decisions to a property factor (or 'manager').

If your title is registered in the **Sasine Register** you will need to examine the original title deeds for any burdens or conditions that may affect your ability to make improvements. These deeds may contain clauses that specify permissions, restrictions, or the decision-making process for shared property.

1.11

DEED OF CONDITIONS

Where your property is within a tenement, there will often be a deed of conditions registered against all the flats within the tenement block, or possibly even the larger estate of which the tenement forms part.

A deed of conditions is a legal document used in Scots law to set out rules and regulations for the management and use of a property, particularly in developments with shared areas or facilities. These deeds are commonly used in residential developments, such as apartment buildings or housing estates, to ensure that all owners adhere to certain standards and obligations. If an owner breaches the conditions set out in the deed, other owners or the property factor can take legal action to enforce compliance.

1.12

DECISION-MAKING ABOUT IMPROVEMENTS TO TENEMENTS

The TMS only applies to the management and maintenance of tenements – it does not apply to improvements.

If the titles do not say anything about improvements or decision-making about improvements, then the unanimous consent of all affected owners is required for the proposed enhancements to the property.

If the improvement is approved by the relevant owners, the costs are generally shared among all owners whose flats benefit from the improvement.

1.13

PROPERTY FACTORS

If a property factor (or manager) is appointed, they may be responsible for overseeing the implementation of improvements and ensuring compliance with the TMS and any relevant legal requirements under the title deeds for the tenement.

1.14

OWNERS' ASSOCIATION

In some circumstances, there may be an owners' association set up to make collective decisions about maintenance and improvements to a tenement building. If so, the decision-making process of the owners' association should be followed where applicable. Further information about owners' associations is set out in section 5 below.

SECTION 02.

Consents required for solar panels, insulation + heat pumps

2.1

CONSENT FROM OTHER OWNERS TO INSTALLATION

As outlined in section 1 of this guidance, if the parts of the building on which the solar panels, insulation or heat pumps and related infrastructure are to be installed or attached are owned in common and the titles do not say anything of relevance about improvements, then the default position is likely to be that consent is required from all owners of the relevant common parts. This ensures that all parties with an interest in the property agree to the installation.

Proper decision-making procedures should be followed and consents documented in writing wherever possible. See Under One Roof's website for further details.

2.2

ACCESS RIGHTS FOR CONNECTION CABLES AND HEATING PIPES

It is also important to understand (i) who owns the ground and parts of the building over which connection cables or heating pipes will be laid or fixed, and (ii) if the affected parts are not wholly owned by one owner, whether there are sufficient rights within the titles to allow the connection cables or heating pipes to be laid or fixed. If there are no existing rights then neighbouring owners may need to give their permission. This is crucial to avoid disputes and to ensure smooth installation.

It may be appropriate for other owners to grant a deed of servitude in respect of the cables and pipes – to give appropriate access rights and rights of installation, as well as for the future repair, maintenance and where necessary replacement of the cables and pipes. The deed of servitude should be drafted by a solicitor, signed by all relevant owners and registered in the Land Register or Sasine Register against all affected titles.

2.3

PUBLICLY ADOPTED LAND / PUBLIC RIGHTS OF WAY / CORE PATHS

If the land on which any connection cables or heating pipes will be laid is (a) publicly adopted, (b) a public 'right of way' or (c) a core path, then the local authority would also need to consent to any works affecting the adopted land, including boreholes and the laying of connection cables or heating pipes under the adopted land.

This could require the local authority to seek formal orders to temporarily restrict access to the land while the works are taking place, which could take some time to put in place. It is therefore important to approach the local authority as soon as possible in advance to check if any consent or formal orders are required.

To check the status of land:-

- Each local authority requires to maintain a statutory register of all adopted public roads, footways and footpaths within their boundary. This register is publicly available from the relevant local authority – although there may be a fee chargeable by some local authorities for providing a road adoption plan or confirming if certain roads, footways or footpaths are publicly adopted. Some local authorities have published their register (in map or list form) on their websites for free.
- To check whether land forms a core path, you can consult the local authority's core paths plan, which is usually available on their website or at their offices. The plan outlines the core paths within the local authority's area, including their location, status, and any restrictions.
- ScotWays has created a national record of public rights of way, called the 'Catalogue of Rights of Way (CROW)'. A CROW search is available from ScotWays for a fee.
- If there is any uncertainty, it would be advisable to contacting the local authority directly for clarification and guidance, or consult a solicitor.

2.4

COST RESPONSIBILITY + MAINTENANCE

Where owners will be utilising the solar panels, insulation and/or heat pumps then owners should all reach an agreement on the responsibility for the costs of installation, maintenance, repair, replacement and removal (temporarily or permanently) of the solar panels, insulation and/or heat pumps.

If the owners are purchasing the equipment and apparatus outright, then the agreement should record the fact that the equipment and apparatus is jointly owned. The agreement should include a schedule for maintenance and repair, as well as the access required for these activities. Clear agreements help prevent future conflicts and ensure proper upkeep.

If the apparatus is owned by a third party and let to owners or is under an agreement permitting owners to use the apparatus for a fee then generally the initial parties to that lease or agreement will be bound by it and responsible for any such fee, unless and until they assign their rights and obligations to a new owner (e.g. if the owner sells their flat). The owner of the equipment may require to consent to any such assignment.

2.5

ROOF / EXTERNAL WALL REPAIRS

Another key aspect to discuss and agree with neighbouring owners is how the solar panels / insulation / heat pumps will impact upon the repair and maintenance of the roof and external walls. This may include the temporary removal of the solar panels, insulation or heat pump to allow for maintenance and their subsequent reinstatement.

2.6

LENDER'S CONSENTS

It is for every affected owner to consider whether they need consent of their mortgage lender before agreeing to the installation of solar panels, insulation or heat pumps, or before granting servitude rights for the cables and pipes if required. This is important for owners to comply with mortgage conditions and avoid any legal issues.

2.7

PLANNING PERMISSION

In Scotland, the need for planning permission to install solar panels, insulation and/or heat pumps on your property depends on several factors:

**SOLAR
PANELS****DOMESTIC PROPERTIES:**

For most domestic properties, installing solar thermal or PV solar panels is considered "permitted development," meaning you generally do not need planning permission. However, there are conditions:

- (i) The panels must not protrude more than 1 metre from the roof or wall surface.
- (ii) They must not be installed above the highest part of the roof (excluding the chimney).
- (iii) If the property is in a conservation area or a listed building, additional restrictions apply, and planning permission may be required.

NON-DOMESTIC PROPERTIES:

Similar rules apply to non-domestic properties, with specific conditions outlined in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. For example, panels must not protrude more than 1 meter from the building's surface and must not be installed on the front or side elevation facing a road in conservation areas.

**AIR SOURCE
HEAT PUMPS****DOMESTIC PROPERTIES:**

Installing an air source heat pump on a domestic property is generally considered "permitted development," meaning you typically do not need planning permission if certain conditions are met. These conditions include:

- (i) The heat pump must not be installed on the principal elevation of the building if it faces a road.
- (ii) The unit must be more than 1 metre from the property boundary.
- (iii) Only one air source heat pump is allowed per building.
- (iv) The heat pump must not exceed a noise level of 42 decibels (dB) when measured at the boundary of the property.

Buildings with higher heat demands (i.e. that contain multiple dwellings) will likely need multiple air source heat pumps to effectively heat each dwelling. Therefore, planning permission will usually be required for the installation of air source heat pumps on tenement buildings that serve multiple flats within the tenement.

**GROUND SOURCE
HEAT PUMPS****DOMESTIC PROPERTIES:**

Ground source heat pumps usually do not require planning permission as they are also considered permitted development. However, this can vary based on the specifics of the installation and the property (e.g. if the property is situated in a conservation area).

NON-DOMESTIC PROPERTIES:

The rules for non-domestic properties can be more complex, and planning permission may be required depending on the scale and impact of the installation.

INSULATION

Installing insulation is generally considered "permitted development" and does not require planning permission. However, if the installation involves significant alterations to the external appearance of the building (i.e. the façade of the building) or if it is in a conservation area or a listed building, planning permission may be required.

**EXCEPTIONS +
SPECIAL CASES****LISTED BUILDINGS:**

If your property is a listed building or within the curtilage of a listed building, you may need to obtain listed building consent in addition to any planning permission for solar panels, insulation and heat pumps.

CONSERVATION AREAS:

In conservation areas, planning permission is required regardless of the type of heat pump and if the panels are to be installed on the front or side elevation of the building facing a road.

Owners should verify whether planning permission is required for the installation of solar panels, insulation or heat pumps by seeking legal advice or discussing with their local planning authority.

2.8

BUILDING WARRANTS

In Scotland, the need for planning permission to install solar panels, insulation and/or heat pumps on your property depends on several factors:

**SOLAR
PANELS**
DOMESTIC PROPERTIES:

Generally, a building warrant is not required for the installation of solar panels on the roof of a single or two-storey house, provided that the existing roof structure can support the panels without significant alteration. However, if structural changes are necessary, a building warrant will be required. For buildings over two storeys, a building warrant is typically required regardless of the extent of structural changes.

NON-DOMESTIC PROPERTIES:

For non-domestic buildings, the need for a building warrant depends on the specifics of the installation and any structural modifications required.

**AIR SOURCE
HEAT PUMP**

Installing an air source heat pump typically does not require a building warrant if it meets certain conditions, such as being installed on the ground or on an external wall of a single or two-storey house. However, if the installation involves significant structural changes or if the property is a listed building, a building warrant may be necessary.

**GROUND SOURCE
HEAT PUMP**

These usually do not require a building warrant unless the installation involves significant excavation (which would typically include bore holes) or structural changes.

**WALL
INSULATION**

Installing wall insulation generally does not require a building warrant unless the installation involves significant structural changes or if the property is a listed building.

**GENERAL
CONSIDERATIONS**
STRUCTURAL INTEGRITY:

Regardless of the type of installation, ensuring that the existing structure can support the new equipment without compromising safety is crucial. If there are any doubts, consulting a structural engineer or the local building standards office is advisable.

COMPLIANCE WITH BUILDING STANDARDS:

All installations must comply with the Building (Scotland) Regulations 2004, which ensure safety, energy efficiency, and environmental standards are met.

It's always a good idea to check with your local building standards office to confirm whether a building warrant is required for your specific installation.

2.9

GRID CONNECTION CONSIDERATIONS

Owners will need to consider the potential difficulties associated with grid connection, especially if there are multiple feed-in points. This includes understanding the technical and regulatory requirements for connecting to the grid and ensuring that the installation is compatible with existing infrastructure. Owners should consult with their local energy network. Further information is available from the Energy Networks Association (<https://www.energynetworks.org/>).

2.10

HEAT NETWORKS – LICENCES, CONSENTS AND PERMITS

The Heat Networks (Scotland) Act 2021 (the “2021 Act”) establishes a framework for the development and regulation of heat networks in Scotland. The 2021 Act has been introduced into law, but most of the key provisions are not yet in force as at the time of writing (March 2025).

WHAT IS A HEAT NETWORK?

Under the 2021 Act a ‘heat network’ is either a district heat network or a communal heating system, which are defined as:

DISTRICT HEAT NETWORK:

network by which thermal energy* is distributed from one or more sources of production to more than one building (e.g. a housing development)

COMMUNAL HEATING SYSTEM:

a system by which thermal energy* is distributed from one or more sources of production to one building comprising more than one building unit (e.g. a block of flats)

**The phrase “thermal energy” includes heating, cooling or hot water.*

HEAT NETWORK LICENCE

Under the 2021 Act, a heat network licence is required in order to supply thermal energy by means of a heat network.

The UK Government included powers in the Energy Act 2023 for Ofgem to be appointed as the Scottish licencing authority.

Ofgem will only grant a heat networks licence if it is satisfied that the applicant has the ability to perform the activities that would be authorised by the licence, having regard to the following matters:

- The applicant's knowledge, expertise, and experience;
- The applicant's ability to operate heat network in a manner that:
 - (i) minimises greenhouse gas emissions,
 - (ii) takes account of ‘just transition’ principles, and
 - (iii) contributes to meeting fuel poverty targets; and
- Any other relevant criteria specified in regulations or determined by the licencing authority.

Conditions for being granted a licence will be set by Ofgem.

Licence holders will be granted new powers under the 2021 Act in connection with the construction, operation and maintenance of a heat network, including to: compulsorily acquire land; obtain, exercise and assign wayleave rights; carry out land surveys; take entry to land; and carry out road works. These are similar to powers already held by utility network operators.

HEAT NETWORK CONSENT

Heat networks will require to be constructed and operated in accordance with a ‘heat network consent’ granted by a consent authority. Heat network consent will only be granted to applicants who have (or will have) the right to use each listed assets of the heat network for the purpose of operating the heat network.

The 2021 Act provides for local authorities to be designated as consent authority for their geographical area, with call-in rights for the Scottish Ministers.

Conditions or limitations on the consent may be imposed by the consent authority.

Where an applicant is proposing to construct a heat network, they should apply to the relevant local authority for heat network consent AND planning permission, and the local authority will then consider both applications together. If the Scottish Ministers are granting or modifying the heat network consent, they may direct that planning permission is deemed to be granted. This is expected to streamline the process for the construction of heat networks.

HEAT NETWORK ZONES

The 2021 Act introduces the concept of 'heat network zones'. Heat network zones are localised areas identified by local authorities or the Scottish Ministers as suitable for developing heat networks, based on factors such as buildings in the area that require considerable and consistent use of thermal energy, as well as the nature and extent of existing infrastructure in the area that could assist in the development of a heat network in the area.

Heat network zones will be identified from data that was collected during the creation of Local Heat and Energy Efficiency Strategies (LHEES) and from other sources.

Each local authority will require to publish the heat network zones within its area and show this in map form. Some local authorities have already identified indicative heat network zones and published these on their website.

HEAT NETWORK ZONE PERMIT

The 2021 Act provides that a 'permit authority' (being the Scottish Ministers or such body as the Scottish Ministers may designate) may by notice provide that a person may only operate a heat network in a heat network zone if the person, or a person on whose behalf the heat network is operated, holds a heat network zone permit.

It is proposed that permits be awarded by way of a competitive process to a single, winning bidder - providing exclusivity for a specified number of years. This is expected to encourage investment in certain areas and drive down costs through economies of scale.

Individuals already operating a heat network in the zone, prior to the permit being required, would not need to obtain a permit, but they would still need heat network consent.

SECTION 03.

Agreements for solar panels, insulation + heat pumps

There are various types of agreements that owners may enter into in order to regulate the installation, use, maintenance, repair and/or removal of solar panels, insulation and heat pumps. These include:

3.1

DEED OF VARIATION

A legal document that modifies existing title deeds, such as a deed of conditions or other burdens, to introduce or vary rights and obligations relating to property.

PROS

ENFORCEABILITY:

Obligations are clearly defined and legally enforceable.

RUNS WITH THE LAND:

Provisions typically run with the land, binding future owners.

CONS

COMPLEXITY:

Requires legal drafting and registration against all affected titles.

AGREEMENT:

All affected owners must consent to the changes.

3.2

DEED OF APPLICATION BY OWNERS APPLYING DMS

A deed to apply the Development Management Scheme (DMS) to a property, providing a framework for managing shared areas.

The Development Management Scheme (DMS) is a framework established under the Title Conditions (Scotland) Act 2003 to manage and maintain properties in developments where multiple owners share common areas. Here are the key points:

- **PURPOSE:** The DMS aims to reduce disputes over maintenance, repairs, and other issues by providing clear rules and procedures for managing shared property.
- **APPLICATION:** Unlike the Tenement Management Scheme (TMS), the DMS does not apply automatically. Owners must register the scheme in the Land Register using a deed of application. This deed specifies the common property covered by the scheme.
- **OWNERS' ASSOCIATION:** Under the DMS, all owners in the development automatically become members of an owners' association. Under the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 SSI 2009/729, the owners association is a corporate body responsible for managing the development for the benefit of all members.
- **POWERS AND RESPONSIBILITIES:** The owners' association has various powers, including maintaining and improving the property, taking out insurance, and collecting service charges from owners to cover costs. They can also appoint a manager to handle day-to-day operations.
- **DECISION-MAKING:** The DMS outlines procedures for making decisions about the property, ensuring that all owners have a say in important matters. This helps maintain transparency and fairness in the management process.

The DMS provides a structured approach to managing shared properties, helping to ensure that all owners' interests are considered and that the property is well-maintained.

PROS

STRUCTURED MANAGEMENT:

Clear rules for maintenance and decision-making.

OWNERS' ASSOCIATION:

Establishes a corporate body for management.

CONS

INITIAL SETUP:

Requires registration and agreement from all owners.

ONGOING OBLIGATIONS:

Owners must comply with the DMS rules and decisions.

See section 5 below for further discussion on owners' associations.

3.3

DEED OF SERVITUDE

A legal agreement granting servitude rights to access parts of the property for installation, maintenance, repair, replacement and/or removal of equipment and connection cables.

PROS

ENFORCEABILITY:

Legally binding and enforceable.

ACCESS RIGHTS:

Ensures necessary access for maintenance and repairs.

CONS

NEGOTIATION:

Requires agreement from all affected owners.

COMPLEXITY:

May involve detailed legal drafting.

3.4

DISPOSITION

One of the owners or a body corporate set up by the owners (see below) may consider buying the other owner's shares in the roof or common areas to gain control over the installation and maintenance of solar panels, for example. In which case the other owners would need to grant a disposition of their shares in the roof or common areas to that one owner.

PROS

CONTROL:

Full control over the area purchased.

SIMPLICITY:

Reduces the need for ongoing negotiations with other owners.

CONS

COST:

Potentially high upfront cost.

TRANSFER ISSUES:

Ownership transfer can be complex and requires legal processes.

3.5

LEASE AGREEMENT

Leasing the roof or common ground to the party installing the solar panels.

PROS

FLEXIBILITY:

Allows use without transferring ownership.

DEFINED TERMS:

Clear terms for use, maintenance, and responsibilities.

CONS

TEMPORARY:

Lease terms are limited in duration.

NEGOTIATION:

Requires agreement on lease terms and conditions.

3.6

MEMORANDUM OF UNDERSTANDING (MOU)

A preliminary agreement outlining the intentions and responsibilities of the parties before a feasibility study.

PROS

CLARITY:

Establishes mutual understanding and expectations.

NON-BINDING:

Flexible and can be adjusted as needed.

CONS

NON-ENFORCEABLE:

Not legally binding.

PRELIMINARY:

Requires further agreements for enforceability.

3.7

EXCLUSIVITY AGREEMENT

Agreements granting one party exclusive rights to negotiate or install solar panels.

PROS

SECURITY:

Ensures exclusive negotiation rights.

FOCUS:

Allows parties to focus on a single potential agreement.

CONS

LIMITATIONS:

Restricts negotiations with other parties.

TIME-BOUND:

Typically limited to a specific period.

3.8

OPTION AGREEMENT

Agreements giving one party the option to purchase or lease the property at a future date.

PROS

FLEXIBILITY:

Provides time to decide on the purchase or lease.

SECURITY:

Locks in terms for future agreements.

CONS

UNCERTAINTY:

May not result in a final agreement.

COST:

Option fees may be required.

SECTION 04.

Matters that agreements will generally require to cover for solar panels, insulation + heat pumps

4.1

Owners should take legal advice on the appropriate form of agreement to be entered into in terms of section 3 above. This is not intended to be an exhaustive list, and owners may need to enter into one or more agreements, depending on various factors, including: the nature of the property, the title conditions, how the relevant equipment will be installed and paid for (upfront and ongoing / future costs), how the responsibilities and costs for maintenance, repair, replacement and upkeep will be allocated, and any other specific requirements of the project.

4.2

Any agreements relating to the installation of solar panels, insulation and/or heat pumps will generally require to cover the following matters:-

- Consent of affected owners to installation and retention of solar panels (duration)
- Requirements for inspection, maintenance, repair and replacement of equipment
- Access to affected parts for installation, maintenance, repair, and replacement of equipment
- Responsibility for repair and reinstatement of affected parts following removal of equipment
- Responsibility for cost of repairing damage to roof occasioned in installation of solar panels, removal of panels to allow for maintenance of roof and thereafter subsequent reinstatement of panels
- Role of and engagement with property manager/factor, where relevant
- How will delivery/storage of electricity be achieved?
- Who that will be responsible for the purchase of the panels?
- Means by which panels will be procured
- Who will apply for grant funding, obtain loans, and undertake feasibility, and structural studies?
- How will consent for the provision of cables for grid connection be achieved – servitude or wayleave required?
- Who will be responsible for the grid connection?
- Who will benefit from the use of the electricity generated, and who will benefit from the electricity fed into the grid?
- How will usage of the electricity generated from heat pumps be measured and monitored?
- How will costs associated with heat consumption be split among users to comply with the Heat Network (Metering and Billing) Regulations 2014?
- Who will apply to the distribution network operator for consent to connect to the grid?
- Who will meet associated costs of grid connection?
- If no grid connection how will battery storage be achieved? –Where will batteries be located, and who will provide them, maintain them, and replace them?
- Responsibility/access for inspection to ensure that the relevant parts of the building are sufficiently structurally sound and that installation of solar panels, heat pump and/or insulation will not affect support and shelter
- What happens when one of the owners that instructed the installation then moves out – how will relevant rights and obligations be transferred to the new owner, or will some rights or obligations be retained by the original owner?
- What will happen in the event of the transfer of the relevant part of the building, such as the roof or common ground
- Insurance – requirement for, obtention and payment
- Warranties
- Who will apply for planning permission?
- Who will apply for building warrant?

4.3

It would be sensible for owners to discuss and agree as much of the above points, as well as any more relevant issues that they may think of, and record their agreement on these points in writing wherever possible. It is reasonable to anticipate that there may be a lack of consensus between owners about the best way to proceed on certain issues. It is foreseeable that there are points which require further thought or investigation before a decision is made by owners on how they wish to proceed.

4.4

Once agreement has been reached on key points, these can be noted in a 'heads of terms' or summary document that may be presented to legal professionals, who can use this to draft the relevant agreement(s) and will inform legal advice on the project.

SECTION 05.

Establishing an owners' association or body corporate

5.1

OWNERS' ASSOCIATION

5.1.1

If there is not already an owners' association in place then owners may wish to consider setting one up.

5.1.2

Owners' associations collectively manage, maintain, and make decisions concerning common areas and shared facilities. Such associations are responsible for ensuring adherence to title conditions, which are legally binding stipulations governing the use and maintenance of properties. They play an essential role in co-ordinating actions related to shared installations, such as solar panels, insulation and heat pumps, to ensure compliance with pre-agreed standards and regulations. By acting collectively, they maintain property values and uphold community standards and obligations.

5.1.3

As discussed in paragraph 3.2 above, if your development or building is subject to the Development Management Scheme (DMS) then this automatically by law creates an owners' association under the Title Conditions (Scotland) Act 2003 which is a body corporate.

5.1.4

However, owners may decide that rather than setting up an owners' association under the DMS, they could establish another type of owners' association – one which is effectively an unincorporated association.

5.1.5

Both options involve owners making collective decisions about the management of common property. However, there are distinct differences between the two options, as set out below:-

	OWNERS' ASSOCIATION UNDER DMS	UNINCORPORATED OWNERS' ASSOCIATION
LEGAL BASIS	Established under Section 71 of the Title Conditions (Scotland) Act 2003	Not defined by legislation. Established by owners signing a constitution.
LEGAL STATUS	Body corporate (separate legal entity)	Unincorporated association with no separate legal status
HOW CONSTITUTED?	Owners automatically become members when DMS application granted	Owners agree a constitution
OWNERS' LIABILITY LIMITED?	Yes	No
ABLE TO ENTER INTO CONTRACTS, SUE AND BE SUED IN OWN NAME?	Yes	No

5.1.6

Owners should consider Under One Roof's guide to setting up an owners' association for further information – <https://underoneroof.scot/a-guide-to-setting-up-an-owners-association/>

5.2

ESTABLISHING A BODY CORPORATE

Whilst owners' associations (excluding those established under a DMS) are not typically incorporated, owners could look to establish a corporate body (known as a 'body corporate') to manage the tenement, or aspects of it, particularly where owners are looking to install solar panels, heat pumps or insulation in common parts of a tenement.

5.3

WHAT IS A BODY CORPORATE

A body corporate refers to a legal entity that is separate and distinct from its members. A body corporate can enter into contracts, own assets, incur liabilities, and sue or be sued in its own name. Each body corporate has its own rules, which specify what it can and cannot do, and all members are bound by those rules.

5.4

TYPES OF BODIES CORPORATE

Examples of types of bodies corporate in Scotland that may be relevant to owners of flats within a tenement include:-

- 5.4.1 Co-operative
- 5.4.2 Limited company
- 5.4.3 Community Interest Company (CIC)
- 5.4.4 Development Management Association

It is not within the scope of this guidance to offer advice on the availability and suitability of any of these options. That will depend on various factors, including the scope of what owners want the body corporate to do (now and in future) and how they envisage decisions being made. Owners should seek legal advice on the best option open to them.

5.5

BENEFITS OF A BODY CORPORATE

Key benefits and characteristics of corporate bodies:-

- 5.5.1 **Collective Decision-Making:**
A body corporate allows for structured and collective decision-making among property owners in accordance with an agreed set of rules.
- 5.5.2 **Delegated authority:**
The rules of the body corporate could allow owners to delegate decision-making on certain matters to one or more persons (e.g. a management committee or office bearers who can make decisions on behalf of all owners on certain matters – enabling day-to-day decisions to be made efficiently and without delay.
- 5.5.3 **Succession:**
A body corporate continues to exist even if the ownership changes or if an owner passes away.
- 5.5.4 **Limited liability:**
One of the most significant advantages of a body corporate is limited liability protection for its owners. This means that the personal assets and financial standing of owners are protected from the body corporate's debts and liabilities. (Note: there are exceptions to this rule, such as when an owner is involved in fraudulent or wrongful activities.)
- 5.5.5 **Single account:**
A body corporate can hold a bank account in its own name, which makes collecting payments from owners and paying invoices more straightforward and easier to manage.

5.6

THE FUTURE OF OWNERS' ASSOCIATIONS AND DECISION-MAKING IN TENEMENTS

Key benefits and characteristics of corporate bodies:-

5.6.1

In 2024, the Scottish Law Commission published a discussion paper on compulsory owners' associations for tenement properties in Scotland. This paper follows recommendations from a 2019 Scottish Parliament Working Group, which aimed to address the poor condition of tenement buildings.

5.6.2 Key points applicable to owners of flats in tenements:-

Purpose

The primary goal is to improve the maintenance and repair of tenement buildings by establishing compulsory owners' associations.

Legal Framework

The paper proposes a legislative basis for these associations, including their formation, operation, and the rights and responsibilities of members.

Annual Meetings

Associations would be required to hold annual meetings to prevent delays in repairs caused by unresponsive owners

Building Inspections

The paper considers the recommendation for mandatory building condition inspections every five years.

Building Reserve Funds

Establishing reserve funds to cover maintenance and repair costs is another key proposal.

5.6.3

These proposed changes are still at a very early stage and it could be several years before any changes are brought before the Scottish Parliament in the way of legislation. It is not a short-term solution.

SECTION 06.

Case study

6.1

Owners considering launching their own retrofit of insulation and clean heating project within their tenement are encouraged to read the "Whole Tenement Retrofit Case Study" published in July 2024 by Under One Roof and Loco Home Retrofit CIC.

6.2

This case study explores the feasibility of retrofitting a traditional tenement building in Dennistoun, Glasgow.

6.3

The case study highlights key legal, financial and practical challenges faced by owners in a traditional multi-story residential tenement with multiple private owners.

6.4

KEY FINDINGS**CHALLENGES**

Retrofitting tenement buildings is complex due to high costs, coordination among multiple owners, and the need for extensive repairs (e.g., stonework and roof tiles).

COST SAVINGS

Implementing heat pumps could save between £318 and £526 per year per flat, even without new insulation.

DECARBONISATION PLAN

A feasible plan might involve minimal changes to common parts of the building, allowing individual owners to adopt measures like heat pumps based on their preferences.

GOVERNANCE RECOMMENDATIONS

The study supports the Scottish Parliamentary Working Group's recommendations for mandatory owners' associations, building reserve funds, and periodic surveys to ensure co-operation and maintenance.

6.5

The case study provides valuable insights for policymakers, tenement owners, and their factors, emphasizing the importance of strong governance frameworks for successful retrofitting.

**We are
here to help.**

**For more advice,
please get in touch.**



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