

Digital Switchover and the Tenement Management Scheme

Introduction

Homes in the Scottish Borders were some of the first in the UK to experience the digital switchover when it began in November 2008. The rest of Scotland will be going digital between May 2010 and summer 2011.

Some property managers and factors who are responsible for blocks of flats have queried whether they can check or upgrade the communal TV aerial system, where the title deeds are silent or unclear about whose responsibility this is. The Tenement Management Scheme is a fall-back model if the title deeds do not lay down procedures for the management and maintenance of the common parts of a tenement. However, the Scheme rules do not say anything expressly about the replacement or upgrading of communal TV aerials, so whether the works can be undertaken will depend ultimately on the interpretation of the specific provisions of the title deeds of the tenement in question.

What is The Tenement Management Scheme?

The Tenement Management Scheme was introduced by the Tenements (Scotland) Act 2004. The Scheme provides a system of management and maintenance of "scheme property", for flat owners (including social landlords) in tenements in Scotland. The Scheme only applies where the title deeds do not make other arrangements, and allows for decision-making, based on a simple majority of owners.

Will the Tenement Management Scheme be helpful for my block?

Decisions on changes to TV aerials in tenements for the digital switchover may come under the Tenement Management Scheme arrangements so long as:

- The title deeds for the tenement do not enable the owners to make decisions on such matters; and
- TV aerials can be regarded as "scheme property" (i.e. they are part of the tenement and are the common property of two or more of the owners or the maintenance or the cost of the maintenance is the responsibility of two or more of the owners); and
- Changing TV aerials as a result of the digital switch-over can be regarded as "maintenance" (which includes replacement but does not include improvement, unless the improvement is reasonably incidental to the maintenance).

More information on the Tenements (Scotland) Act 2004 can be found at:

<http://www.scotland.gov.uk/Topics/Justice/law/17975/11023>

and in Common Repair, Common Sense, by Consumer Focus Scotland:

<http://www.consumerfocus.org.uk/assets/3/files/2009/09/Common-Repair-Common-Sense-full-lowres.pdf>