

2009 No. 729 (S. 2)

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

TITLE CONDITIONS, SCOTLAND

**The Title Conditions (Scotland) Act 2003 (Development
Management Scheme) Order 2009**

Made - - - - - *18th March 2009*

Laid before Parliament *24th March 2009*

Coming into force *1st June 2009*

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SCHEDULE 2 — FORM OF NOTICE OF PROPOSAL TO REGISTER DEED OF VARIATION

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2), (3) and (7) of the Scotland Act 1998(a):

PART 1

Introductory

Citation, commencement and extent

1.—(1) This Order may be cited as the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 and comes into force on 1st June 2009.

(2) This Order extends only to Scotland.

Interpretation

2. In this Order—

“the Act” means the Title Conditions (Scotland) Act 2003(b);

“association” means the owners’ association of the development established under article 4;

“benefited unit” means a unit advantaged by a rule;

“burdened unit” means a unit constrained by a rule;

“deed of application” means a deed granted pursuant to section 71 of the Act;

“deed of variation” means a deed of variation or discharge granted pursuant to article 7 or 8;

“the development” means the land to which the Development Management Scheme is applied as described in the deed of application;

“the Development Management Scheme” has the meaning given in article 3;

“Lands Tribunal” means the Lands Tribunal for Scotland;

“manager” means the person appointed to be manager of the association;

“member” means a member of the association in accordance with rule 2.3 of the Development Management Scheme;

“owner” has the meaning given in article 18;

“registering” in relation to any document, means registering an interest in land or information relating to an interest in land (being an interest or information for which that document provides) in the Land Register of Scotland or, as the case may be, recording in the Register of Sasines (cognate expressions being construed accordingly);

“road” has the meaning given by section 151(1) of the Roads (Scotland) Act 1984(c);

“rule” means a rule of the Development Management Scheme;

“scheme property” has the meaning given in article 20;

“send” shall be construed in accordance with article 19 (cognate expressions being construed accordingly);

“service charge” has the meaning given in the Development Management Scheme;

“tenement” and “tenement building” have the meanings given in section 26 of the Tenements (Scotland) Act 2004(d);

“unit” means an individual property forming the development as described in the deed of application for that development; and

(a) 1998 c.46.
(b) 2003 asp 9.
(c) 1984 c.54.
(d) 2004 asp 11.

“variation” includes the imposition of a new obligation (cognate expressions being construed accordingly).

PART 2

The Development Management Scheme

The Development Management Scheme

3. The Development Management Scheme is the scheme of rules for the management of land set out in Schedule 1 to this Order or, in relation to a particular development, that scheme as applied to the development with such variations as may be specified by the deed of application and any other variations as may subsequently be made to that scheme.

Owners’ association

4.—(1) The owners’ association for the development is established on the date on which the Development Management Scheme applied to that development takes effect under section 71(1) of the Act in respect of that development (or part of that development).

(2) The association is, on being established, a body corporate.

Application of provisions of the Act to rules of Scheme

5.—(1) Sections 2, 3, 5, 10, 11, 13, 14, 16, 18, 59 to 61, 67, 70 and 105 of the Act shall apply, as modified by section 72 of the Act, in relation to the rules of the Development Management Scheme (other than the rules set out in Part 2 of Schedule 1 to this Order) as those sections apply in relation to community burdens.

(2) Sections 68, 69, 98, 100 and 104 of the Act shall not apply in relation to the rules of the Development Management Scheme.

(3) In this article and subject to paragraph (4), “community burdens” has the same meaning as in the Act.

(4) For the purposes of the application of the sections of the Act mentioned in paragraph (1) “unit” has the meaning given in article 2 of this Order.

PART 3

Variation of the Development Management Scheme

Variation of Scheme in deed of application

6.—(1) A deed of application may, subject to paragraph (2), apply the Development Management Scheme to any land with such variations as may be specified in the deed of application.

(2) The rules in Part 2 of Schedule 1 to this Order may not be varied in a deed of application other than in accordance with paragraph (3).

(3) The deed of application must specify (as required in the instructions in rule 2.2) the name of the association, being a name which either ends with the words “Owners’ Association” or begins with those words preceded by the definite article.

Variation of Scheme with agreement of owners of affected and adjacent units

7.—(1) A rule of the Development Management Scheme (other than any rule in Part 2 of Schedule 1 to this Order) may be varied, or discharged, in relation to a unit by registering against that unit (“the affected unit”) a deed of variation granted—

- (a) by the association, in accordance with the Development Management Scheme;
- (b) by the owner of the affected unit; and
- (c) by the owner of at least one adjacent unit (if any) in relation to the affected unit.

(2) For the purposes of paragraph (1), “adjacent unit” means, in relation to an affected unit, any unit which is at some point within four metres of the affected unit.

(3) The reference in paragraph (2) to an adjacent unit being within four metres of the affected unit is a reference to distance along a horizontal plane, disregarding—

- (a) the width of any intervening road if of less than twenty metres; and
- (b) any pertinent of either unit.

Variation of Scheme generally by owners’ association

8. A rule of the Development Management Scheme (other than any rule in Part 2 of Schedule 1 to this Order) may, subject to article 9, be varied, or discharged, in relation to a unit by registering against that unit a deed of variation granted by the association in accordance with the Development Management Scheme.

Intimation of variation under article 8

9.—(1) Where a deed of variation is granted under article 8, a proposal to register that deed must be intimated by the association to the members.

(2) Intimation under paragraph (1) is to be given by sending a copy of the deed, together with—

- (a) a notice in, or as near as may be in, the form set out in Schedule 2 to this Order; and
- (b) the note which immediately follows that form in that Schedule.

(3) A member may, during the period of eight weeks beginning with the date on which intimation of the proposal to register the deed is given to that member under paragraph (1), apply under article 22(1)(b) to the Lands Tribunal for preservation, unvaried, of the Development Management Scheme or a rule thereof.

(4) A deed of variation granted under article 8 does not, on registration, vary or discharge a rule of the Development Management Scheme unless, after the expiry of the period of eight weeks beginning with the latest date on which intimation is given under paragraph (1), there is endorsed on it (or on an annexation to it referred to in an endorsement on it and identified, on the face of the annexation, as being the annexation so referred to) a certificate executed by a member of the Lands Tribunal, or by their clerk, to the effect that no application in relation to the proposal to register the deed has been received under article 22(1)(b) or that any such application which has been received—

- (a) has been withdrawn; or
- (b) relates to one or more but not to all of the rules of the Development Management Scheme to be varied or discharged by the deed (any rule to which it relates being described in the certificate),

and where more than one such application has been received the certificate must relate to both or (as the case may be) all applications.

(5) Registration of a deed of variation granted under article 8 does not vary or discharge any rule described in a certificate by virtue of paragraph (4)(b).

(6) Before a deed of variation granted under article 8 is submitted for registration a certificate must be endorsed on the deed by the association confirming—

- (a) that paragraphs (1) and (2) have been complied with; and

- (b) as to the date on which the period mentioned in paragraph (4) expires.

Enforcement of rules by members

10.—(1) Notwithstanding article 6(2), 7(1) or 8, a deed of application or a deed of variation may confer a right to enforce all or some of the rules of the Development Management Scheme on a member and the right to enforce may be conferred in respect of specified units or all the units in the development.

(2) Where a deed of application or a deed of variation confers a right to enforce a rule on a member, the member is entitled to enforce the rule only if the member has interest to enforce it.

(3) A member has such interest if, in the circumstances of any case, failure to comply with the rule is resulting in, or will result in, material detriment to the value or enjoyment of the member's ownership of the unit.

Further provision as respects deeds of variation

11.—(1) Where a deed of variation is granted no grantee is required.

(2) A deed of variation may be registered by an owner of a burdened unit or by a grantor.

PART 4

Rights of creditors

Rights of creditors

12.—(1) Where—

- (a) a debt due by the association satisfies the conditions mentioned in article 13; or
- (b) the association is being, or has been, wound up,

any creditor of the association shall be entitled to recover a proportion of the debt from the owner of each of the units (or, as the case may be, from the person who was at the commencement of the winding up the owner of a unit) in accordance with the provisions of paragraphs (2) to (4).

(2) The owner of each unit is, subject to paragraph (4), liable to the creditor for the proportion of the debt attributable to the unit in accordance with paragraph (3).

(3) The proportion of the debt attributable to each unit is—

- (a) where service charge is payable by the owner of the unit in accordance with the Development Management Scheme, the share of the debt equal to the proportion of service charge which would have been attributable to the unit had the debt been due as service charge; or
- (b) if there is no service charge payable, an equal share of the debt.

(4) Where all or part of the proportion of the debt attributable to a unit (“a non-paying unit”) cannot be recovered (for example, because the estate of the owner of the non-paying unit has been sequestrated or cannot by reasonable inquiry be identified or found) then the proportion of the debt recoverable by the creditor from the other units shall be increased by an amount equal to an equal share (as among such other units) of the proportion of the debt which cannot be recovered from the owner of the non-paying unit.

(5) If an owner of a unit makes a payment to a creditor in accordance with paragraph (4) that owner may recover an amount equal to the amount paid under paragraph (4) from the owner of the non-paying unit.

(6) If two or more persons own a unit in common then, unless the Development Management Scheme otherwise provides—

- (a) they are severally liable in respect of the proportion of the debt; and

- (b) as between (or among) themselves, they are liable in the proportions in which they own the unit.

Conditions referred to in article 12

13. The conditions referred to in article 12(1) are that—

- (a) the debt is constituted by—
 - (i) decree; or
 - (ii) a document which has been registered for execution in the Books of Council and Session or, as the case may be, in the appropriate sheriff court books kept for any sheriffdom; and
- (b) either—
 - (i) the creditor has executed diligence but has not recovered the debt in full; or
 - (ii) it does not appear that the association has any assets which reasonably could be recovered by diligence.

PART 5

Challenges to operation of the Scheme

Application to sheriff for annulment of decisions made under Scheme

14.—(1) A member may, by summary application to the sheriff, seek an order annulling a decision made by the association at a general meeting provided that the member was not, at the time the decision was made, in favour of the decision.

(2) An application by a member under paragraph (1) is to be made—

- (a) in a case where the decision was made at a meeting attended by the member, not later than twenty-eight days after the date of that meeting; or
- (b) in any other case, not later than twenty-eight days after the date on which notice of the making of the decision was sent to the owner for the time being of the unit in question.

(3) The sheriff may, if satisfied that the decision—

- (a) is not in the best interests of all the members taken as a group; or
- (b) is unfairly prejudicial to one or more of the members,

make an order annulling the decision (in whole or in part).

(4) Where an application under paragraph (1) is made as respects a decision to carry out maintenance, improvements or alterations, the sheriff is, in considering whether to make an order under paragraph (3), to have regard to—

- (a) the age of the property which is to be maintained, improved or, as the case may be, altered;
- (b) its condition;
- (c) the likely cost of any such maintenance, improvements or alterations; and
- (d) the reasonableness of that cost.

(5) Where the sheriff makes an order under paragraph (3) annulling a decision (in whole or in part), the sheriff may make such other, consequential, order as the sheriff thinks fit (for example, an order as respects the liability of members for any costs already incurred).

(6) A party may, not later than fourteen days after the date of—

- (a) an order under paragraph (3); or
- (b) an interlocutor dismissing an application under paragraph (1),

appeal to the Court of Session on a point of law.

(7) A decision of the Court of Session on an appeal under paragraph (6) shall be final.

(8) Where a member is entitled to make an application under paragraph (1) in relation to any decision, no step shall be taken to implement that decision unless—

- (a) the period specified in paragraph (2) within which such an application is to be made has expired without such an application having been made and notified to the members; or
- (b) where such an application has been so made and notified—
 - (i) the application has been disposed of and either the period specified in paragraph (6) within which an appeal against the sheriff's decision has expired without such an appeal having been made or such an appeal has been made and disposed of; or
 - (ii) the application has been abandoned.

(9) Paragraph (8) does not apply to a decision relating to work which requires to be carried out urgently.

(10) For the purposes of any application under paragraph (1) the defender shall be the association.

Application to sheriff for order resolving certain disputes

15.—(1) Any member may by summary application apply to the sheriff for an order relating to any matter concerning the operation of—

- (a) the Development Management Scheme which applies as respects the development; or
- (b) any provision of this Order in its application as respects the development.

(2) Where an application is made under paragraph (1) the sheriff may, subject to such conditions (if any) as the sheriff thinks fit—

- (a) grant the order craved; or
- (b) make such other order as the sheriff considers necessary or expedient.

(3) A party may not later than fourteen days after the date of—

- (a) an order under paragraph (2); or
- (b) an interlocutor dismissing an application under paragraph (1),

appeal to the Court of Session on a point of law.

(4) A decision of the Court of Session on an appeal under paragraph (3) shall be final.

PART 6

General

Liability of successor for service charge

16.—(1) Where a person who becomes, or is to become, an owner of a unit in the development obtains a certificate signed by the manager stating that as at the date on which it is signed no service charge is outstanding as respects the unit or, as the case may be, that any service charge due does not exceed an amount specified in the certificate, then, apart from a service charge no greater than the amount so specified, that person shall not be liable for any service charge which was outstanding on that date.

(2) The manager must, on the request of the person mentioned in paragraph (1), prepare and sign a certificate required for the purposes of that paragraph and provide it to that person.

Continued application of the rules following disapplication of the Scheme

17. Rules 6 and 17 and any other rule of the Development Management Scheme in so far as applicable as respects the winding up of the association, shall continue to have effect notwithstanding the disapplication of the Scheme to the development.

The expression “owner”

18.—(1) Subject to paragraph (2), “owner”, in relation to any unit, means a person who has right to the unit whether or not that person has completed title; but if, in relation to the unit (or, if the unit is held *pro indiviso*, any *pro indiviso* share in the unit) more than one person comes within that description of owner, then “owner”–

- (a) for the purposes of article 7(1), means any person having such right; and
- (b) for any other purpose, means such person as has most recently acquired such right.

(2) Where a heritable creditor is in lawful possession of security subjects which comprise the unit, then “owner”–

- (a) for the purposes of article 7(1) includes, in addition to any such person as is mentioned in paragraph (1)(a), that heritable creditor; and
- (b) for any other purposes means the heritable creditor.

Sending

19.—(1) Where a provision of this Order requires that a thing be sent–

- (a) to a person it shall suffice, for the purposes of that provision, that the thing be sent to an agent of the person;
- (b) to a member and that member cannot by reasonable inquiry be identified or found, it shall suffice, for the purposes of that provision, that the thing be sent to the member’s unit addressed to “The Owner” (or using some other such expression, as for example “The Proprietor”).

(2) Except in paragraph (3), any reference in this Order to a thing being sent is to be construed as a reference to its being–

- (a) posted;
- (b) delivered; or
- (c) transmitted by electronic means.

(3) For the purposes of any provision of this Order, a thing posted is to be taken to be sent on the day of posting; and a thing transmitted by electronic means, to be sent on the day of transmission.

Scheme property

20.—(1) Subject to paragraphs (2) and (3) “scheme property” means the property specified or described as such in the Development Management Scheme.

(2) Where the development is, or includes, a tenement “scheme property” includes–

- (a) any part of a tenement that is the common property of the owners of two or more units;
- (b) with the exceptions mentioned in paragraph (3), the following parts of a tenement building (so far as not scheme property by virtue of paragraph (a))–
 - (i) the ground on which it is built;
 - (ii) its foundations;
 - (iii) its external walls;
 - (iv) its roof (including any rafter or other structure supporting the roof);
 - (v) if it is separated from another building by a gable wall, the part of the gable wall that is part of the tenement building; and

- (vi) any wall (not being one falling within the preceding sub-paragraphs), beam or column that is load-bearing.

(3) The following parts of a tenement building are the exceptions referred to in paragraph (2)(b)–

- (a) any extension which forms part of only one unit;
- (b) any–
 - (i) door;
 - (ii) window;
 - (iii) skylight;
 - (iv) vent; or
 - (v) other opening; and
- (c) any chimney stack or chimney flue.

Tenements – emergency work, redistribution of costs

21.—(1) Where the development is, or includes, a tenement, rule 14 of Schedule 1 to this Order applies and is to be treated as forming a rule of the Development Management Scheme as applied to that development to the extent that there is no rule in the Development Management Scheme as applied to that development making provision for a member to instruct or carry out any emergency work as defined in that rule.

(2) Where the development is, or includes, a tenement, rule 19.4 of Schedule 1 to this Order applies and is to be treated as forming a rule of the Development Management Scheme as applied to that development to the extent that there is no rule in the Development Management Scheme as applied to that development making provision as to the liability of the members in the circumstances covered by the provisions of that rule.

PART 7

Powers of the Lands Tribunal for Scotland

Powers of the Lands Tribunal

22.—(1) Subject to articles 28 and 30 and to paragraphs (3) and (4), the Lands Tribunal may by order, on the application of a member–

- (a) discharge or vary a rule of the Development Management Scheme (other than a rule in Part 2 of the Development Management Scheme) in relation to a unit owned by that member;
- (b) preserve, as mentioned in article 9(3), a rule in respect of which intimation of a proposal to register a deed of variation has been given under article 9(1); or
- (c) determine any question as to the validity, applicability or enforceability of a rule of the Development Management Scheme or as to how it is to be construed.

(2) Where the Lands Tribunal refuse an application under paragraph (1)(b), they are to vary or discharge the rule accordingly.

(3) It is not competent to make an application under paragraph (1)(b)–

- (a) after the expiry of the period mentioned in article 9(3), except with the consent of the association; or
- (b) after there has been, in relation to the proposal, endorsement under article 9(4).

(4) Variation which would impose a new obligation or would result in the owner of a unit becoming entitled to enforce an obligation shall not be competent on an application under paragraph (1)(a) unless the owner of the unit subject, or to be made subject, to the obligation consents.

(5) Subject to paragraph (7), an order discharging or varying a rule may—

- (a) where made under paragraph (1)(a) direct the applicant; or
- (b) where made by virtue of the refusal of an application under paragraph (1)(b), direct the association,

to pay to any person who was entitled to enforce the rule, such sum as the Lands Tribunal may think it just to award under one, but not both, of the heads mentioned in paragraph (6).

(6) The heads are—

- (a) a sum to compensate for any substantial loss or disadvantage suffered by the member, as owner of a unit, in consequence of the discharge or variation;
- (b) a sum to make up for any effect which the rule produced, at the time when it was created, in reducing the consideration then paid or made payable for the burdened unit.

(7) A direction under paragraph (5) shall be made only if the person directed consents.

(8) Subject to paragraph (9), an order discharging or varying a rule may impose on a unit a new rule or vary a rule extant at the time the order is made.

(9) An imposition under paragraph (8) shall be made only if the owner of the unit consents.

Special provision as to variation or discharge of rules

23.—(1) Without prejudice to article 22(1)(a), an application may be made to the Lands Tribunal under this article by owners of at least one quarter of the units for the variation or discharge of a rule (other than a rule in Part 2 of the Development Management Scheme) as it affects, or as the case may be would affect, all or some of the units forming the development.

(2) In the case of an application made by owners of some (but not all) of the units forming the development, the units affected need not be the units which they own.

(3) Paragraphs (5) to (7) of article 22 apply in relation to an order made by virtue of paragraph (1) varying or discharging a rule as they apply to an order under article 22(1)(a).

Notification of application

24.—(1) The Lands Tribunal must, on receipt of an application under—

- (a) article 22(1)(a) or 23(1), give notice of that application to the association and the members;
- (b) article 22(1)(b) or (c), give such notice to the association,

and subject to paragraph (2) are to do so by sending the notice.

(2) If the person to whom the notice is to be given cannot, by reasonable inquiry, be identified or found, notice under paragraph (1) may be given by advertisement, or by such other method as the Lands Tribunal think fit.

(3) The Lands Tribunal may also give notice of the application, by such means as they think fit, to any other person.

Content of notice

25.—(1) The Lands Tribunal must in any notice given by them under article 24(1)—

- (a) summarise or reproduce the application;
- (b) set a date (being a date no earlier than twenty-one days after the notice is given) by which representations to them as respects the application may be made;

- (c) state the fee which must accompany any such representations; and
- (d) state that if the application is not opposed it may be granted without further inquiry.

(2) Any notice given (other than by advertisement) in respect of an application under article 22(1)(a) or article 23 must also set out the name and address of every person to whom the notice is being sent.

Persons entitled to make representations

26. The persons entitled to make representations as respects an application under article 22 or 23 are—

- (a) the association; and
- (b) any member.

Representations

27.—(1) Representations made by any person to the Lands Tribunal as respects an application under article 22 or 23 must be in writing and must comprise a statement of the facts and contentions upon which the person proposes to rely.

(2) Representations are made when they are received by the Lands Tribunal with the requisite fee; and a person sending such representations must forthwith send a copy of them to the applicant.

(3) Notwithstanding article 25(1)(b), the Lands Tribunal may if they think fit accept representations made after the date set under that sub-paragraph.

Granting applications for discharge, variation or preservation of a rule

28.—(1) An application for the variation, discharge or preservation of a rule is to be granted by the Lands Tribunal only if they are satisfied, having regard to the factors set out in paragraph (2) that—

- (a) except in the case of an application under article 22(1)(b), it is reasonable to grant the application; or
- (b) in such a case, the variation or discharge in question—
 - (i) is not in the best interests of all the members (taken as a group); or
 - (ii) is unfairly prejudicial to one or more members.

(2) The factors mentioned in paragraph (1) are—

- (a) any change in circumstances since the rule was created (including, without prejudice to that generality, any change in the character of the benefited unit or burdened unit or of the neighbourhood of the units);
- (b) the extent to which the rule confers a benefit on a benefited unit;
- (c) the extent to which the rule impedes enjoyment of the burdened unit;
- (d) if the rule is an obligation to do something, how—
 - (i) practicable; or
 - (ii) costly,it is to comply with the rule;
- (e) the length of time which has elapsed since the rule was created;
- (f) the purpose of the rule;
- (g) whether in relation to the burdened unit there is the consent, or deemed consent of a planning authority, or consent of some other regulatory authority, for a use which the rule prevents;

- (h) whether the owner of the burdened unit is willing to pay compensation;
- (i) any other factor which the Lands Tribunal consider to be material.

Expenses

29. The Lands Tribunal may, in determining an application made under article 22 or 23, make such order as to expenses as they think fit but are to have regard, in particular, to the extent to which the application, or any opposition to the application, is successful.

Taking effect of orders of Lands Tribunal etc.

30.—(1) Subject to paragraphs (2) to (4), an order made by the Lands Tribunal in respect of an application under article 22 or article 23 takes effect on the occurrence of whichever of the following events last occurs after the Lands Tribunal has made the order—

- (a) the expiry of the period of 21 days after the date when the order was made by the Lands Tribunal;
- (b) the disposal by the Court of Session of a case stated by the Lands Tribunal on appeal to that court or, if there is an appeal to the House of Lords, the disposal of the case by the House of Lords;
- (c) the abandonment or other termination of the proceedings on a case so stated without a decision having been given;
- (d) the abandonment or other termination of an appeal against the decision of the Court of Session on a case so stated or the expiry of the time for bringing any such appeal without it having been brought; or
- (e) the variation by the Lands Tribunal of the order in compliance with any directions given by the Court of Session or the House of Lords in proceedings relating to such a case.

(2) Where the application is unopposed or all persons who have opposed or made representations in respect of the application have informed the Lands Tribunal that they consent to the order taking effect immediately, and it is so certified in the order, such order takes effect on the date on which it is made by the Lands Tribunal.

(3) Where a rule is varied or discharged subject to the payment of any compensation awarded by the Lands Tribunal, the order of the Lands Tribunal shall not, so far as it affects such variation or discharge, take effect until the Lands Tribunal has endorsed the order to the effect either that the compensation has been paid or that all persons to whom any compensation has been awarded but who have not received payment of it have agreed to the order taking effect.

(4) The Lands Tribunal may direct that the compensation must be paid or satisfied within a specified time and that, unless it is so paid or satisfied, the order shall be void on the expiration of the time so specified.

Registration of orders

31.—(1) An order under—

- (a) article 22(1) granting an application under article 22(1)(a) or (b);
- (b) article 22(1) on the refusal (wholly or partly as the case may be) of an application under article 22(1)(b); or
- (c) article 23(1);

which has taken effect in accordance with article 30 may be registered against the unit of the development by any person who was a party to the application or who was, under article 26, entitled to make representations as respects the application; and on the order being so registered the rule to which it relates is preserved, discharged (wholly or partly) or varied according to the terms of the order.

(2) Any enforceability which the obligation in question has as a contractual obligation is unaffected by an order made under article 22(1) or article 23.

ANN McKECHIN
Parliamentary Under Secretary of State
Scotland Office, Ministry of Justice

Dover House,
London
18th March 2009

DEVELOPMENT MANAGEMENT SCHEME

PART 1

INTERPRETATION

RULE 1 – INTERPRETATION

1. Definitions

In this scheme, unless the context otherwise requires–

- “the Act” means the Title Conditions (Scotland) Act 2003(a);
- “advisory committee” means any such committee formed in pursuance of rule 15.1;
- “association” means the owners’ association of the development established under article 4 of the Development Management Scheme Order;
- “deed of disapplication” means a deed granted pursuant to section 73 of the Act;
- “deed of variation” means a deed of variation or discharge granted pursuant to article 7 or 8 of the Development Management Scheme Order;
- “the development” is [*specify the extent of the development*];
- “the Development Management Scheme Order” means the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009(b);
- “general meeting” means an annual or other general meeting of the association;
- “maintenance” includes repairs or replacement, cleaning, painting and other routine works, gardening and the day-to-day running of property; but does not include demolition, alteration or improvement unless reasonably incidental to the maintenance;
- “manager” means the person appointed to be manager of the association;
- “member” means a member of the association in accordance with rule 2.3;
- “owner” has the meaning given in article 18 of the Development Management Scheme Order;
- “regulations” means regulations made under rule 3.6;
- “reserve fund” means money held on behalf of the association to meet the cost of long-term maintenance, improvement or alteration of scheme property or to meet such other expenses of the association as the association may determine;
- “scheme property” means [*describe the property which is subject to maintenance under the scheme*];
- “service charge” means the contribution to association funds payable in accordance with Part 4 of this scheme and includes additional service charge; and
- “unit” means [*specify the individual properties forming the development*].

(a) 2003 asp 9.

(b) S.I. 2009/ 729 (S.2)

PART 2
THE OWNERS' ASSOCIATION
RULE 2 - ESTABLISHMENT, STATUS ETC.

2.1 Establishment

The association is established on the day on which this scheme takes effect.

2.2 Status

The association is a body corporate to be known as [*specify the name of the owners' association*].

2.3 Members of the association

The members are the persons who, for the time being, are the owners of the units to which this scheme applies and has taken effect; and where two or more persons own a unit both (or all) of them are members.

2.4 Address of association

The address of the association is that of—

- (a) the development; and
- (b) the manager,

or either of them.

RULE 3 - FUNCTION, POWERS AND ENFORCEMENT

3.1 Function of association

The function of the association is to manage the development for the benefit of the members.

3.2 Powers of the association

The association has, subject to rule 3.3, power to do anything necessary for or in connection with the carrying out of the function mentioned in rule 3.1 and in particular may—

- (a) own, or acquire ownership of, any part of the development;
- (b) carry out maintenance, improvements or alterations to, or demolition of, the scheme property;
- (c) enter into a contract of insurance in respect of the development or any part of it (and for that purpose the association is deemed to have an insurable interest);
- (d) purchase, or otherwise acquire or obtain the use of, moveable property;
- (e) require owners of units to contribute by way of service charge to association funds;
- (f) open and maintain an account with any bank or building society;
- (g) invest any money held by the association;
- (h) borrow money; or
- (i) engage employees or appoint agents.

3.3 Prohibited activities

The association shall not have power to–

- (a) acquire land outwith the development;
- (b) carry on any trade whether or not for profit; or
- (c) make regulations other than in accordance with rule 3.6.

3.4 Scheme to be binding

This scheme is binding on the association, the manager and the members as are any regulations which have taken effect; and a rule, or any such regulation, in the form of an obligation to refrain from doing something is binding on–

- (a) a tenant of property affected by the rule or regulation; or
- (b) any other person having the use of such property.

3.5 Enforcement of scheme

The association may enforce–

- (a) the provisions of this scheme and any regulations which have taken effect; and
- (b) any obligation owed by any person to the association.

3.6 Regulations

The association may, at a general meeting–

- (a) make regulations as to the use of recreational facilities which are part of the scheme property; and
- (b) revoke or amend regulations made under paragraph (a),

but any such regulation, revocation or amendment takes effect only after a copy of it has been delivered or sent to each member.

RULE 4 - THE MANAGER

4.1 Association to have manager

The association is to have a manager who, subject to any other provision of this scheme, is a person (whether or not a member) appointed by the association at a general meeting.

4.2 Power to remove manager

The association may at a general meeting remove the manager from office before the expiry of that person's term of office.

4.3 Validity of actings of manager

Any actings of the manager are valid notwithstanding any defect in that person's appointment.

4.4 Manager to be agent

The manager is an agent of the association.

4.5 Exercise of powers

Subject to this scheme, any power conferred on the association under or by virtue of this scheme is exercisable by–

- (a) the manager; or
- (b) the association at a general meeting.

4.6 Duties owed to association and members

Any duty imposed on the manager under or by virtue of this scheme is owed to the association and to the members.

4.7 Manager to comply with directions

The manager must, in so far as it is reasonably practicable to do so, comply with any direction given by the association at a general meeting as respects the exercise by the manager of–

- (a) powers conferred; or
- (b) duties imposed,

on the association or on the manager.

4.8 Information about management

Any member may require the manager to allow that member to inspect a copy of any document, other than any correspondence with another member, which relates to the management of the development; and if the document is in the manager's possession or it is reasonably practicable for the manager to obtain a copy of it the manager must comply with the requirement.

4.9 Notice to manager on sale etc. of unit

Any member who sells or otherwise disposes of a unit must, before the date on which the person to whom the unit is to be sold (or otherwise transferred) will be entitled to take entry, send a notice to the manager stating, to the extent to which the information is known by that member–

- (a) the entry date and the name and address of that person;
- (b) the name and address of the solicitor or other agent acting for that person in the acquisition of the unit; and
- (c) an address at which the member may be contacted after that date.

RULE 5 – EXECUTION OF DOCUMENTS

5. Execution of documents by association

A document is signed by the association if signed on behalf of the association by–

- (a) the manager; or
- (b) a person nominated for the purpose by the association at a general meeting,

provided that the manager or person acts within actual or ostensible authority to bind the association.

RULE 6 – WINDING UP

6.1 Commencement of winding up

The manager must commence the winding up of the association on the day on which this scheme ceases to apply as respects the development.

6.2 Distribution of funds

The manager must, as soon as practicable after the commencement of the winding up, use any association funds to pay any debts of the association; and thereafter must distribute in accordance with this scheme any remaining funds among those who were, on the date when the winding up commenced, owners of units.

6.3 Final accounts

The manager must–

- (a) prepare the final accounts of the association showing how the winding up was conducted and the funds were disposed of; and
- (b) not later than six months after the commencement of the winding up, send a copy of those accounts to the owner of every unit.

6.4 Automatic dissolution of association

Subject to rule 6.5, the association is dissolved at the end of the period of six months beginning with the commencement of the winding up.

6.5 Delayed dissolution

At any time before the end of the period of six months mentioned in rule 6.4, the members may determine that the association is to continue for such period as they may specify; and if they so determine it is dissolved at the end of the period so specified.

PART 3

MANAGEMENT

RULE 7 - APPOINTMENT OF MANAGER

7.1 First manager

The first manager is [*complete name and address of manager*] and–

- (a) acts as manager until the first annual general meeting is held;
- (b) is entitled to reasonable remuneration; and
- (c) is eligible for reappointment.

7.2 Appointment of manager

The association–

- (a) at the first annual general meeting; and
- (b) where the manager's period of office expires or a vacancy occurs, at any subsequent general meeting,

is to appoint a person to be manager on such terms and conditions as the association may decide.

7.3 Certificate of appointment

Not later than one month after the date of a general meeting at which a person is appointed to be manager—

- (a) that person; and
- (b) on behalf of the association, a member,

must sign a certificate recording the making, and the period, of the appointment.

RULE 8 - DUTIES OF MANAGER

8. Duties of manager

The manager must manage the development for the benefit of the members and in particular must—

- (a) from time to time carry out inspections of the scheme property;
- (b) arrange for the carrying out of maintenance to scheme property;
- (c) fix the financial year of the association;
- (d) keep, as respects the association, proper financial records and prepare the accounts of the association for each financial year;
- (e) implement any decision made by the association at a general meeting;
- (f) in so far as it is reasonable to do so, enforce—
 - (i) any obligation owed by any person to the association; and
 - (ii) the provisions of the scheme and of any regulations which have taken effect;
- (g) if there are regulations, keep a copy of them (taking account of revocations and amendments); and
- (h) keep a record of the name and address of each member.

RULE 9 – CALLING OF GENERAL MEETINGS

9.1 First annual general meeting

The first annual general meeting must be called by the manager and held not later than twelve months after the day on which, in accordance with rule 2.1, the association is established.

9.2 Annual general meetings

The manager must call an annual general meeting each year; and a meeting so called must be held no more than fifteen months after the date on which the previous annual general meeting was held.

9.3 Other general meetings

The manager may call a general meeting at any time and must call a general meeting if—

- (a) a revised draft budget requires to be considered;
- (b) required to call that meeting by members holding not less than twenty-five per cent. of the total number of votes allocated; or
- (c) so required by a majority of the members of the advisory committee.

9.4 Calling of meeting

Not later than fourteen days before the date fixed for a general meeting the manager must call the meeting by sending to each member–

- (a) a notice stating–
 - (i) the date and time fixed for the meeting and the place where it is to be held; and
 - (ii) the business to be transacted at the meeting; and
- (b) if the meeting is an annual general meeting, copies of the draft budget and (except in the case of the first annual general meeting) the accounts of the association for the last financial year.

9.5 Validity of proceedings

Any inadvertent failure to comply with rule 9.4 as respects any member does not affect the validity of proceedings at a general meeting.

9.6 Member's right to call meeting in certain circumstances

Any member may call a general meeting if–

- (a) the manager fails to call a general meeting–
 - (i) in a case where paragraph (b) or (c) of rule 9.3 applies, not later than fourteen days after being required to do so as mentioned in those paragraphs; or
 - (ii) in any other case, in accordance with this scheme; or
- (b) the association does not have a manager.

9.7 Procedure where member calls meeting

Where under rule 9.6 a general meeting is called by a member–

- (a) any rule imposing a procedural or other duty on the manager in relation to general meetings (other than the duty imposed by rule 9.4(b)) applies as if it imposed the duty on the member; and
- (b) if there is a manager, the member must send that person a notice stating the date and time fixed for the meeting, the business to be transacted at it and the place where it is to be held.

RULE 10 – GENERAL MEETINGS: QUORUM

10.1 Number required for quorum

A quorum is–

- (a) where there are no more than thirty units in the development, members present or represented holding fifty per cent. of the total number of votes allocated;
- (b) where there are more than thirty such units, members present or represented holding thirty-five per cent. of the total number of votes allocated.

10.2 Quorum necessary for meeting to begin

A general meeting is not to begin unless there is a quorum; and if there is still no quorum twenty minutes after the time fixed for a general meeting then–

- (a) the meeting is to be postponed until such date, being not less than fourteen nor more than twenty-eight days later, as may be specified by the manager (or, if the manager is not

present or if there is no manager, by a majority of the members present or represented); and

- (b) the manager (or any member) must send to each member a notice stating the date and time fixed for the postponed meeting and the place where it is to be held.

10.3 No quorum at postponed meeting

A meeting may be postponed only once; and if at a postponed meeting the provisions in rule 10.2 as respects a quorum are not satisfied, then the members who are present or represented are to be deemed a quorum.

10.4 Quorum need not be maintained

If a general meeting has begun, it may continue even if the number of members present or represented ceases to be a quorum.

RULE 11 – GENERAL MEETINGS: VOTING

11.1 Allocation and exercise of votes

For the purpose of voting on any proposal at a general meeting one vote is allocated to each unit; and any right to vote is exercisable by the owner of that unit or by someone (not being the manager) nominated in writing by the owner to vote.

11.2 Exercise of vote where two or more persons own unit

If a unit is owned by two or more persons the vote allocated to that unit may be exercised by either (or any) of them; but if those persons disagree as to how the vote should be cast then no vote is counted for that unit.

11.3 Decision by majority

Except where this scheme otherwise provides, a decision is made by the association at a general meeting by majority vote of all the votes cast.

11.4 Method of voting

Voting on any proposal is by show of hands; but the convener may determine that voting on a particular proposal is to be by ballot.

RULE 12 – GENERAL MEETINGS: FURTHER PROVISIONS

12.1 Election of convener

The members present or represented at a general meeting are to elect one of their number or the manager to be convener of the meeting; and on being so elected the convener is to take charge of the organisation of the business of the meeting.

12.2 Additional business

Any member present or represented at a general meeting may nominate additional business to be transacted at that meeting.

12.3 Manager to attend and keep record of business transacted

Except where unable to do so because of illness or for some other good reason, the manager must attend each general meeting and–

- (a) keep a record of the business transacted; and
- (b) not later than twenty-one days after the date of the meeting, send a copy of the record of business to each member,

and where the manager does not attend the convener is to nominate a person present to carry out the manager’s duties under paragraphs (a) and (b) of this rule in respect of the meeting.

RULE 13 - SPECIAL MAJORITY DECISIONS

13.1 Special majority required

The association may–

- (a) make a payment out of any reserve fund which it has formed; or
- (b) use any money held on behalf of the association to carry out improvements or alterations to, or demolition of, scheme property (not being improvements, alterations or demolition reasonably incidental to maintenance),

but only after the association have, at a general meeting, by majority vote of all the votes allocated, determined to do so.

13.2 Consent of owner to be given where not common property

Where scheme property is not the common property of the members (or not the common property of members who between them own two or more units) a determination under rule 13.1 for the purposes of paragraph (b) of that rule may be implemented only if the owner of the property consents in writing to the improvements, alterations or demolition in question.

RULE 14 - EMERGENCY WORK

14.1 Power to instruct etc.

Any member may instruct or carry out emergency work.

14.2 Reimbursement of member

The association must reimburse any member who pays for emergency work.

14.3 Meaning of “emergency work”

“Emergency work” means work which requires to be carried out to scheme property–

- (a) to prevent damage to any part of that or any other property; or
- (b) in the interests of health or safety,

in circumstances in which it is not practicable to consult the manager before carrying out the work.

RULE 15 - ADVISORY COMMITTEE

15.1 Power to elect advisory committee

The association may at a general meeting elect such number of the members as it may specify to form an advisory committee whose function is to provide the manager with advice relating to the manager's–

- (a) exercise of powers; and
- (b) fulfilment of duties,

under or by virtue of this scheme.

15.2 Manager to consult advisory committee

Where an advisory committee is formed, the manager is from time to time to seek advice from the committee.

RULE 16 – VARIATION

16.1 Deeds of variation under article 7

The manager may, on behalf of the association and after consulting the advisory committee (if any), grant a deed of variation under article 7 of the Development Management Scheme Order, and at the first general meeting after the granting of the deed the manager must then report that it has been so granted.

16.2 Deeds of variation under article 8 and deeds of disapplication

The manager may, on behalf of the association, grant a deed of variation under article 8 of the Development Management Scheme Order or a deed of disapplication but only after the association has, at a general meeting, by majority of all the votes allocated, determined to do so.

RULE 17 – WINDING UP

17 Distribution of funds on winding up

Where funds are distributed under rule 6.2 the basis of distribution is that each unit receives one share.

PART 4

FINANCIAL MATTERS

RULE 18 – ANNUAL BUDGET

18.1 Duty of manager to prepare annual budget

Before each annual general meeting the manager must prepare, and submit for consideration at that meeting, a draft budget for the new financial year.

18.2 Content of draft budget

A draft budget is to set out–

- (a) the total service charge and the date (or dates) on which the service charge will be due for payment;
- (b) an estimate of any other funds which the association is likely to receive and the source of those funds;
- (c) an estimate of the expenditure of the association; and
- (d) the amount (if any) to be deposited in a reserve fund.

18.3 Consideration of draft budget by association

The association may at a general meeting–

- (a) approve the draft budget subject to such variations as it may specify; or
- (b) reject the budget and direct the manager to prepare a revised draft budget for consideration by the association at a general meeting to be called by the manager and to take place not later than two months after the date of the meeting at which the budget is rejected.

18.4 Rejected budget – payment of service charge

Where the budget is rejected the service charge exigible under the budget last approved is, until a new budget is approved, to continue to be exigible and is to be due for payment on the anniversary (or anniversaries) of the date (or dates) on which it was originally due for payment.

18.5 Revised draft budget

At a general meeting at which a revised draft budget is considered, the association may approve or reject the budget as mentioned in rule 18.3(a) and (b).

RULE 19 - SERVICE CHARGE

19.1 Amount of service charge

Except where rule 19.2 applies, the amount of any service charge imposed under this scheme is the same as respects each unit.

19.2 Service charge exemption

The association may at a general meeting decide as respects a particular owner and in relation to a particular payment that no service charge (or a service charge of a reduced amount) is payable.

19.3 Manager to collect service charge

When the draft budget has been approved in accordance with this scheme, the manager–

- (a) must send to each owner a notice requiring payment, on the date (or dates) specified in the budget, of the amount of the service charge so specified; and
- (b) may send to each owner at any time a notice–
 - (i) requiring payment, on the date (or dates) stated in the notice, of an additional amount of service charge determined under rule 20.1; and
 - (ii) explaining why the additional amount is payable,

and each owner is liable for that amount accordingly.

19.4 Redistribution of share of costs

Where an owner is liable for a service charge but the service charge cannot be recovered (for example because the estate of that owner has been sequestrated, or that owner cannot, by reasonable inquiry, be identified or found) then that service charge is to be shared equally among the other owners or, if they so decide, is to be met out of any reserve fund; but that owner remains liable for the service charge.

19.5 Interest payable on overdue service charge

Where any service charge (or part of it) remains outstanding not less than twenty-eight days after it became due for payment, the manager may send a notice to the owner concerned requiring that person to pay interest on the sum outstanding at such reasonable rate and from such date as the manager may specify in the notice.

19.6 Interpretation of rule 19

In rule 19 references to “owner” are references to an owner of a unit.

RULE 20 – ADDITIONAL SERVICE CHARGE

20.1 Additional service charge

The manager may from time to time determine that an additional service charge, limited as is mentioned in rule 20.2, is payable by the members to enable the association to meet any expenses that are due (or soon to become due) and which could not be met otherwise than out of the reserve fund.

20.2 Limit on amount of additional service charge

In any financial year the total amount of any additional service charge determined under rule 20.1 is not to exceed twenty-five per cent. of the total service charge for that year as set out in the budget approved by the association; but in calculating that percentage no account is to be taken of any additional service charge payable in respect of the cost of emergency work (as defined in rule 14.3).

20.3 Supplementary budget

If in any financial year the manager considers that any additional service charge exceeding the percentage mentioned in rule 20.2 should be payable, the manager must prepare and submit to the association at a general meeting a draft supplementary budget setting out the amount of the additional service charge and the date (or dates) on which the charge will be due for payment; and rules 18.3, 18.4 and 19.3(a) apply as respects that draft supplementary budget as they apply as respects a draft budget and revised draft budget.

RULE 21 – FUNDS

21.1 Association funds

Any association funds must be–

- (a) held in the name of the association; and
- (b) subject to rule 21.2, deposited by the manager in a bank or building society account.

21.2 Special treatment of certain funds

The manager must ensure that any association funds which are likely to be held for some time are—

- (a) deposited in an account which is interest-bearing; or
- (b) invested in such other way as the association may at a general meeting decide.

21.3 Reserve fund

The manager must ensure that any association funds forming a reserve fund are kept separately from other association funds.

RULE 22 – SENDING

22.1 Sending

Where a rule requires that a thing be sent—

- (a) to a person it shall suffice, for the purposes of that rule, that the thing be sent to an agent of the person;
- (b) to a member and that member cannot by reasonable inquiry be identified or found, it shall suffice, for the purposes of that rule, that the thing be sent to the member's unit addressed to "The Owner" (or using some other such expression, as for example "The Proprietor").

22.2 Method of sending

Any reference to a thing being sent shall be construed as a reference to its being—

- (a) posted;
- (b) delivered; or
- (c) transmitted by electronic means.

22.3 Date of sending

A thing posted shall be taken to be sent on the day of posting; and a thing transmitted by electronic means, to be sent on the day of transmission.

SCHEDULE 2

Article 9(2)

FORM OF NOTICE OF PROPOSAL TO REGISTER DEED OF VARIATION

“NOTICE OF PROPOSAL TO REGISTER DEED OF VARIATION

Owners’ Association:

(see note for completion 1)

Description of unit(s) in relation to which a rule is to be varied or discharged:

(see note for completion 2)

Terms of rule(s):

(see note for completion 3)

Effect of registration of deed on rule(s):

(see note for completion 4)

An application to the Lands Tribunal for Scotland for preservation of the scheme must be made not later than [specify the date on which the period mentioned in article 9(3) of the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 expires].

Signature of proposer:

Date: .

NOTE

This notice is given under Article 9 of the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009. The sender is the owners' association for the development and wishes [to free a property of a rule of the scheme] *or* [to vary a rule of the scheme].

A deed of variation has already been granted. A copy of the deed in question is attached. If the deed is duly registered the rule will be [discharged] *or* [varied] in relation to the unit.

If you want to preserve the scheme unvaried, you can apply to the Lands Tribunal for Scotland in that regard. The address of the Lands Tribunal is [*insert address*] and their telephone number is [*insert telephone number*]. For further guidance you may wish to consult a solicitor or other adviser.

An application to the Lands Tribunal must be made by the date stated in the notice. If no application is made by then the scheme may be varied on registration of the deed of variation.”.

NOTES FOR COMPLETION OF THE NOTICE

(These notes have no legal effect)

1. Give the name and address of the owners' association (see rule 2.4).
2. Describe the unit in a way that is sufficient to identify it. Where the unit has a postal address the description should include that address. Where the title has been registered in the Land Register the description should refer to the title number of the property or of the larger subjects of which the unit forms part. Otherwise it should normally refer to and identify a deed recorded in a specified division of the Register of Sasines.
3. Identify the deed of application by reference to the appropriate Register, and set out the rule(s) in full.
4. If a rule of the scheme is wholly to be discharged say so; otherwise describe the extent of variation or discharge.
5. Intimation is by sending (or delivering) the notice. Since evidence of sending may be required at the time of registration in the Land Register, it is recommended that the notice be sent by recorded delivery or registered post.
6. There is to be endorsed on the deed before registration the certificate required by Article 9(4) of the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made in consequence of the provisions of the Title Conditions (Scotland) Act 2003 (“the 2003 Act”). In particular section 71 of the 2003 Act enables the owner of land to apply a scheme of rules known as the Development Management Scheme (“the Scheme”) set out in this Order to a development by registering a deed of application in the appropriate Scottish property register. The Order comes into force on 1st June 2009.

In terms of article 3 the Scheme is generally made up of the rules contained in Schedule 1 to the Order but in relation to a particular development the Scheme will comprise those rules as applied with any variations made in the deed of application registered under section 71 of the 2003 Act.

Article 4 provides that the owners’ association for a development is established on the date on which the Scheme takes effect for that development and that on being established the association is a body corporate.

The rules of the Scheme have a close functional resemblance to real burdens, particularly to community burdens within the meaning of the 2003 Act. Article 5 operates to apply various provisions of the 2003 Act to the rules of the Scheme as those provisions apply to community burdens.

Article 6 makes provision for variation of the Scheme by a deed of application. The Scheme as applied to a particular development may be subsequently varied in accordance with articles 7 to 9.

The provisions for variation mirror those contained in sections 32 to 37 the 2003 Act in respect of community burdens.

The rules of the Scheme are enforceable by the owners’ association (rule 3.5 of the Scheme). Article 10 enables rights of enforcement to be conferred on the owners of individual units.

Article 11 provides that a deed of variation need not be granted in favour of a person and that it may be registered by the granter or the owner of any unit burdened by the rule to be varied or discharged.

Article 12 confers rights on creditors of the association to recover a debt from members of the association where the association is being or has been wound up and where the creditor is not able to recover the debt from the owners association in the circumstances set out in article 13.

Article 14 provides a means by which a decision made by the owners’ association can be challenged. A member has the right to make a summary application to the sheriff court for the annulment of that decision.

Article 15 gives the sheriff powers, on application by a member, to make orders relating to the operation of the Scheme or the provisions of the Order as respects a development. The sheriff may grant the order sought or any other order as the sheriff may think necessary or expedient. Any party to a dispute may appeal to the Court of Session on a point of law.

Article 16 requires the manager to provide a certificate on request in relation to the amount of outstanding service charge and limits the liability for service charge of a purchaser of a property who obtains such a certificate.

Article 17 makes provision for continuation of rules of the Scheme which relate to winding up should the Scheme cease to apply to a development.

Article 18 defines who is the owner of a unit and article 19 makes provision for how and when things may be sent in accordance with the Order. Article 20 defines “scheme property”.

Article 21 ensures that rules 14 and 19 of the Scheme apply to tenements as default rules where the Scheme as applied to the development does not contain equivalent rules.

Article 22 confers jurisdiction on the Lands Tribunal for Scotland in relation to the discharge or variation of the Scheme and the determination of the validity, applicability or enforcement of a rule of the Scheme.

Article 23 allows owners of 25% of the units in a development to apply to the Lands Tribunal to vary or discharge the Scheme. Once an application has been received, the Lands Tribunal must notify interested parties. Article 24 sets out who are to be notified and the means by which notification should be given. Article 25 sets out the content of the notice. Article 26 provides that the owners' association and any member are entitled to make representations. Article 27 sets out how representations are to be made. The Tribunal must consider applications for variation, discharge or preservation on their merits. Article 28 sets out test and factors for the Lands Tribunal in making a decision. Article 29 provides that the Lands Tribunal has a discretion as to expenses, but directs the Tribunal to have some regard to the principle that expenses follow success. Article 30 sets out when an order of the Tribunal takes effect and article 31 makes provision for the registration of such orders.

Schedule 1 to the Order sets out the rules of the Development Management Scheme. It is divided into four parts and consists of 22 rules which, other than those in Part 2, may be varied. Part 1 consists of a single rule (rule 1) which explains the meaning of some of the words used in the Scheme.

Under the Scheme the development is managed by an association of all the owners. Part 2 includes provisions for the establishment of the owners' association (rule 2) and its functions and powers (rule 3). Part 2 also makes provision in rule 4 for the powers and main duties of a manager and in rule 5 for how the owners' association executes documents. Rule 6 makes provision for the winding up of the owners' association.

Part 3 of the Scheme makes provision for the management of the development. Rule 7 provides how a manager is to be appointed and rule 8 sets out that manager's duties. Rules 9 to 13 provide for the calling of annual and other general meetings, the quorum at such meetings and voting and procedure at such meetings. Rule 14 enables a member of the association to instruct or carry out emergency work and to recover the cost. In terms of article 21(1) of the Order this rule will, where the development in question is a tenement, be treated as forming part of the Scheme even if not applied by the deed of application to the extent that the Scheme as applied does not include equivalent provision. Rule 15 enables the association to form an advisory committee. Rule 16 provides how deeds of variation are to be executed and rule 17 sets out how funds are to be distributed if the association is wound up.

Part 4 relates to the financial management of the association. Under rule 18 the manager is to prepare a budget. Rule 18 also provides for consideration and approval of the budget by the association. Rule 19 sets out how service charge is to be determined and collected and rule 20 allows for additional service charge to be levied where needed to meet the expenditure of the association. Rule 21 states how funds are to be held for the owners' association. Rule 22 sets out methods by which notices or other documents may be sent in accordance with the Scheme.

Schedule 2 to the Order comprises the form of notice to be given under article 9(2) to the members of the association where it is proposed to vary the Scheme by means of a deed of variation under article 8.

