



Abolition of Feudal Tenure etc. (Scotland) Act 2000

2000 asp 5

PART 4

REAL BURDENS

Conservation burdens

26 Conservation bodies

F1

Textual Amendments

F1 S. 26 repealed (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 128(2), 129(5)(b)(c), sch. 15 (with ss. 119, 121)

27 Notice preserving right to enforce conservation burden

- (1) Where a conservation body has, or the Scottish Ministers have, the right as superior to enforce a real burden of the class described in subsection (2) below or would have that right were it or they to complete title to the *dominium directum*, it or they may, before the appointed day, preserve for the benefit of the public the right to enforce the burden in question after that day by executing and registering against the *dominium utile* of the land subject to the burden a notice in, or as nearly as may be in, the form contained in schedule 8 to this Act; and [^{F2}, without prejudice to section 27A(1) of this Act,] any burden as respects which such a right is so preserved shall, on and after the appointed day, be known as a “conservation burden”.
- (2) The class is those real burdens which are enforceable against a feudal estate of *dominium utile* of land for the purpose of preserving, or protecting—
 - (a) the architectural or historical characteristics of the land; or

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- (b) any other special characteristics of the land (including, without prejudice to the generality of this paragraph, a special characteristic derived from the flora, fauna or general appearance of the land).
- (3) The notice shall—
- (a) state that the superior is a conservation body by virtue of section [F338 of the Title Conditions (Scotland) Act 2003 (asp 9) (which makes provision generally as respects conservation burdens)] or that the superior is the Scottish Ministers;
 - (b) set out the title of the superior;
 - (c) describe, sufficiently to enable identification by reference to the Ordnance Map, the land subject to the real burden (or any part of that land);
 - (d) set out the terms of the real burden; and
 - (e) set out the terms of any counter-obligation to the real burden if it is a counter-obligation enforceable against the superior.
- (4) This section is subject to sections 41 and 42 of this Act.

Textual Amendments

- F2** Words in s. 27(1) inserted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **sch. 13 para. 6(a)** (with ss. 119, 121)
- F3** Words in s. 27(3)(a) substituted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **sch. 13 para. 6(b)** (with ss. 119, 121)

[F427A] **Nomination of conservation body or Scottish Ministers to have title to enforce conservation burden**

- (1) Where a person other than a conservation body or the Scottish Ministers has the right as superior to enforce a real burden of the class described in section 27(2) of this Act or would have that right were he to complete title to the *dominium directum*, he may, subject to subsection (2) below, before the appointed day nominate for the benefit of the public, by executing and registering against the *dominium utile* of the land subject to the burden a notice in, or as nearly as may be in, the form contained in schedule 8A to this Act, a conservation body or the Scottish Ministers to have title on or after that day to enforce the burden against that land; and, without prejudice to section 27(1) of this Act, any burden as respects which such title to enforce is by virtue of this subsection so obtained shall, on and after the appointed day, be known as a “conservation burden”.
- (2) Subsection (1) above applies only where the consent of the nominee to being so nominated is obtained—
- (a) in a case where sending a copy of the notice, in compliance with section 41(3) of this Act, is reasonably practicable, before that copy is so sent; and
 - (b) in any other case, before the notice is executed.
- (3) The notice shall—
- (a) state that the nominee is a conservation body (identifying it) or the Scottish Ministers, as the case may be; and
 - (b) do as mentioned in paragraphs (b) to (e) of section 27(3) of this Act.
- (4) This section is subject to sections 41 and 42 of this Act except that, in the application of subsection (1)(i) of section 42 for the purposes of this subsection, such discharge as

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is mentioned in that subsection shall be taken to require the consent of the nominated person.]

Textual Amendments

- F4** S. 27A inserted (1.11.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(3), 129(3) (with ss. 119, 121); S.S.I. 2003/455, art. 2(a)

28 Enforcement of conservation burden

- (1) ^{F5} . . . If a notice has been executed and registered in accordance with section 27 of this Act and, immediately before the appointed day, the burden to which the notice relates is still enforceable by the conservation body or the Scottish Ministers as superior or would be so enforceable, or still so enforceable, were the body in question or they to complete title to the *dominium directum* then, on and after the appointed day, the conservation body or as the case may be the Scottish Ministers shall—
- (a) subject to any counter-obligation, have title to enforce the burden against the land to which the notice in question relates; and
 - (b) be presumed to have an interest to enforce that burden.
- (2) The references in subsection (1) above to—
- (a) the conservation body include references to—
 - (i) any conservation body which is; or
 - (ii) the Scottish Ministers where they are, its successor as superior;
 - (b) the Scottish Ministers include references to a conservation body which is their successor as superior.

Textual Amendments

- F5** Words in s. 28 repealed (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 128(2), 129(5) (b)(c), sch. 15 (with ss. 119, 121)

[^{F6}28A Effect of section 27A nomination

If a notice has been executed and registered in accordance with section 27A of this Act and, immediately before the appointed day, the burden to which the notice relates is still enforceable by the nominating person as superior (or by such person as is his successor) or would be so enforceable, or still so enforceable, were the person in question to complete title to the *dominium directum* then, on and after the appointed day, the conservation body or as the case may be the Scottish Ministers shall—

- (a) subject to any counter-obligation, have title to enforce the burden against the land to which the notice in question relates; and
- (b) be presumed to have an interest to enforce that burden.]

Textual Amendments

- F6** S. 28A inserted (1.11.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(4), 129(3) (with ss. 119, 121); S.S.I. 2003/455, art. 2(a)

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29 Assignment of right to conservation burden

F7

Textual Amendments

F7 Ss. 29-32 repealed (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 128(2), 129(5)(b)(c), sch. 15 (with ss. 119, 121)

30 Deduction of title for conservation burden

F8

Textual Amendments

F8 Ss. 29-32 repealed (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 128(2), 129(5)(b)(c), sch. 15 (with ss. 119, 121)

31 Extinction of burden on body ceasing to be conservation body

F9

Textual Amendments

F9 Ss. 29-32 repealed (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 128(2), 129(5)(b)(c), sch. 15 (with ss. 119, 121)

32 No standard security over conservation burden

F10

Textual Amendments

F10 Ss. 29-32 repealed (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 128(2), 129(5)(b)(c), sch. 15 (with ss. 119, 121)

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