

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 Conservation and Other Personal Real Burdens

Section 43: Rural housing Burdens

188. This section introduces a category of personal real burden to be known as “rural housing burdens”. Such burdens are to be created in favour of a ‘rural housing body’. Rural housing burdens are included in the definition of personal real burdens in section 1(3). As a result, the holder has a presumed interest to enforce, and the burden need not operate in favour of other land. *Subsection (1)* sets out the type of burden which may be created. Only rights of pre-emption can be created as rural housing burdens. Feudal rights of pre-emption which are converted into personal pre-emption burdens by the registration of a notice under section 18A of the 2000 Act will also be rural housing burdens if the holder is a rural housing body (section 122(1)). A rural housing burden may be created by anyone but may only be in favour of a rural housing body. A rural housing body is one which has as one of its main objects or functions the provision of housing on rural land or to provide rural land for housing. Subsections (5) to (8) provide for the establishment by the Scottish Ministers of a list of rural housing bodies. Names may be added to or removed from the list.
189. A rural housing burden will allow the rural housing body a personal pre-emption right when selling land. This will give them the right to repurchase the property in the event of it coming up for sale, and as a consequence, the ability to control future sales. Rural housing burdens differ from normal pre-emption burdens in two ways. The first is that instead of having 21 days in which to accept an offer, a body would have 42 days to accept (section 84(3)). Secondly, the body will not lose the right of pre-emption if it is not exercised (section 84(1)). If the right of pre-emption is not exercised when the property is being resold it will lie dormant until the next sale. Under section 84(1) most rights of pre-emption are allowed only one opportunity to repurchase. The rural housing body will not therefore *have* to step in and use the pre-emption only to recreate the burden in a subsequent resale. Because the pre-emption will survive not being used when a sale occurs, section 18 on prescription provides that a failure to offer the property back to the rural housing body will not eliminate the pre-emption by 5 year prescription. Section 83(1) will allow a rural housing body to give a pre-sale undertaking in relation to a particular sale without extinguishing the burden.
190. The terms of the rural housing burden, as with other rights of pre-emption, will be freely negotiated with the purchaser and could detail the terms and price at which the property could be bought back. It is possible in the creation of a pre-emption to specify the price at which the property can be repurchased. That provision could be used in these circumstances to allow the rural housing body to buy back the property at a similar price to that of the original sale.

*These notes relate to the Title Conditions (Scotland) Act
2003 (asp 9) which received Royal Assent on 3 April 2003*

191. *Subsection (2)* provides that if someone other than a rural housing body wishes to create a rural housing burden they must first obtain the consent of the body which it is intended will hold the right to enforce the burden.
192. *Subsection (3)* ensures that a rural housing burden cannot be used when a body is selling under the right to buy legislation.
193. *Subsection (4)* prohibits the creation of a standard security over a rural housing burden. Further explanation of this can be found in the note on subsection (3) of section 38 which deals with conservation burdens.
194. *Subsection (5)* provides for the Scottish Ministers to prescribe by subordinate legislation a list of rural housing bodies who will be entitled to hold the right to enforce rural housing burdens created in their favour.
195. *Subsection (6)* sets out the criteria for a body to be included on the list. Only a body which has as one of its main functions or objects the provision of housing on rural land or the provision of rural land for housing may be prescribed as a rural housing body.
196. Since trusts are not separate legal persons, *subsection (7)* makes it clear that in relation to a trust the rural housing body would be the trustees.
197. *Subsection (8)* allows bodies to be removed from the list.
198. The effect of *subsection (9)* is that the definition of rural land is drawn from section 33 of the Land Reform (Scotland) Act 2003.
199. *Subsection (10)* imports the provisions on assignation, enforcement where no completed title, completion of title and extinction which apply to conservation bodies.