

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: Pre-Emption and Reversion

Section 83: Extinction following pre-sale undertaking

337. *Subsection (1)* allows the owner of the burdened property to obtain, in advance of a sale, an undertaking that a right of pre-emption will not be exercised for a specified period and subject (if desired) to specified conditions. The ‘holder’ of a right of pre-emption is the person last registered as having title to the burden (section 82). Generally this will be the owner of the benefited property (section 8(4)), the holder of the personal real burden, or, in the case of a pre-emption in a lease, the landlord. A statutory form of undertaking is set out in schedule 10. If the sale then takes place within the specified period, and if the other conditions are met, the pre-emption is extinguished on registration of the conveyance except for rural housing burdens. If the sale does not occur, then the pre-emption would revive after the specified period.
338. *Subsection (2)* makes clear that successors of the holder are bound by the undertaking if it is registered. There is no requirement to register the undertaking. If it is not registered, it will be necessary in Sasine cases to retain the undertaking as evidence of its terms. For land registered in the Land Register, the Keeper is likely to need a copy of an unregistered undertaking before being able to remove the burden from the title sheet.