

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: Pre-Emption and Reversion

Section 84: Extinction following offer to sell

339. This provision is based on, and replaces, section 9 of the Conveyancing Amendment (Scotland) Act 1938 (which is repealed by schedule 15). It applies to the pre-emptions mentioned in section 82 (i.e. all feudal pre-emptions and all other pre-emptions created after 1 September 1974).
340. *Subsection (1)* provides that a pre-emption is extinguished if, on sale or other trigger event, the property is offered back to the pre-emption holder. It makes no difference whether the offer is accepted or rejected. As with section 9 of the 1938 Act the extinction is for all time. The constitutive deed might specify a trigger event other than sale. For rural housing burdens subsection (1) applies not to extinguish the burden but rather to satisfy the requirements of the burden in the instant case.
341. *Subsection (2)* specifies the form the offer must take for the pre-emption to be extinguished. This does no more than give effect to section 1(2)(a)(i) of the Requirements of Writing (Scotland) Act 1995, which requires a granter to subscribe the relevant deed. A verbal offer, therefore, would be insufficient.
342. *Subsection (3)* provides that the offer lapses after a maximum period of 21 days from the date on which it is sent. For rural housing burdens, however, the period is 42 days. An offer which is posted or transmitted by electronic means is taken to be sent on the day of posting or transmission (section 124(3)). If the constitutive deed provides for a period of less than 21 days, then that period will apply.
343. If the constitutive deed sets out terms under which the land would be sold to the pre-emption holder, then these will be applied. It is, however, more usual for the constitutive deed to provide for the offer back to be made on the same terms as any offer received from a third party which the owner wishes to accept. These are terms ‘provided for’ in the sense of *subsection (4)*.
344. Where no terms are set out in the constitutive deed the terms of the offer must be reasonable, and unreasonable terms should not be included in the offer back. It is not necessarily sufficient to repeat the terms agreed with a third party; these are the terms “provided for”. The offer to the holder must itself be on reasonable terms. The subsection also allows additional terms to be inserted.
345. *Subsection (5)* provides that if the pre-emption holder does not indicate within 21 days that the offer is unreasonable then the offer is deemed to be reasonable. An offer which was found to be unreasonable would not extinguish the right of pre-emption. The pre-emption holder will have to give reasons why the offer is unreasonable.
346. *Subsection (6)* makes provision for the case where the pre-emption holder cannot be identified.