



# Title Conditions (Scotland) Act 2003

## 2003 asp 9

### PART 10

#### MISCELLANEOUS

##### *Miscellaneous*

#### **115 Further provision as respects notices of preservation or of converted servitude**

- (1) This section applies in relation to a notice of preservation or of converted servitude.
- (2) Except where it is not reasonably practicable to do so, the owner of the benefited property shall, before executing the notice, send to the owner of the burdened property a copy of—
  - (a) the notice;
  - (b) the explanatory note set out in whichever schedule to this Act relates to the notice; and
  - (c) in the case of a notice of converted servitude, the constitutive deed (if any).
- (3) The owner of the benefited property shall, in the notice, state either—
  - (a) that a copy of the notice has been sent in accordance with subsection (2) above; or
  - (b) that it was not reasonably practicable for such a notice to be so sent.
- (4) However many the benefited or burdened properties may be, if the terms of the real burdens or converted servitudes are set out in a single constitutive deed, execution and registration may be accomplished in a single notice.
- (5) The Keeper of the Registers of Scotland shall not be required to determine whether a person submitting a notice for registration has complied with subsection (2) above.
- (6) Where—
  - (a) a notice submitted before the expiry of the period of ten years which commences immediately after the appointed day is rejected by the Keeper; but
  - (b) a court or the Lands Tribunal then determines that the notice is registrable,the notice may, if not registered before that expiry, be registered—

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*Status: This is the original version (as it was originally enacted).*

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- (i) within two months after the determination is made; but
- (ii) before such date after that expiry as the Scottish Ministers may by order prescribe;

and any notice registered under this subsection shall be treated as if it had been registered before that expiry.

(7) For the purposes of subsection (6) above, the application to the court, or to the Lands Tribunal, which has resulted in the determination shall require to have been made within such period as the Scottish Ministers may by order prescribe.

(8) In subsection (6)(b) above, “court” means Court of Session or sheriff.

#### **116 Benefited property outwith Scotland**

As respects a real burden or servitude, the benefited property need not be in Scotland; but where it is not then nothing in this Act requires registration against that property.

#### **117 Pecuniary real burdens**

On and after the day on which this section comes into force, it shall not be competent to create a pecuniary real burden (that is to say, to constitute a heritable security by reservation in a conveyance).

#### **118 Common interest**

On and after the day on which this section comes into force—

- (a) it shall not be competent to create a right of common interest; and
- (b) no such right shall arise otherwise than by implication of law.