



# Title Conditions (Scotland) Act 2003

## 2003 asp 9

### PART 11

#### SAVINGS, TRANSITIONAL AND GENERAL

##### *Savings and transitional provisions etc.*

#### **119 Savings and transitional provisions etc.**

- (1) Nothing in this Act shall be taken to impair the validity of creating, varying or discharging a real burden by the registering of a deed before the appointed day.
- (2) This Act is without prejudice to section 3(1) of the 1979 Act (effect of registration).
- (3) The repeal by this Act of section 32 of the Conveyancing (Scotland) Act 1874 (c. 94) does not affect the construction of the expression “deed of conditions” provided for in section 122(1) of this Act.
- (4) Sections 8 and 14 of this Act do not affect proceedings commenced before the appointed day.
- (5) Section 10 of this Act does not apply where a person ceases to be, or becomes, an owner before the appointed day.
- (6) Section 16 of this Act does not apply as respects a breach of a real burden which occurs before the appointed day.
- (7) Section 61 of this Act does not apply as respects a constitutive deed (or a deed into which the constitutive deed is incorporated) registered before the appointed day except in so far as a real burden the terms of which are set out in the constitutive deed is a community burden.
- (8) Sections 75 and 78 of this Act do not apply as respects a deed executed before the appointed day.
- (9) <sup>F1</sup>.....
- (10) Except where the contrary intention appears, this Act applies to all real burdens, whenever created.

*Status: Point in time view as at 28/11/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Title Conditions (Scotland) Act 2003, Part 11. (See end of Document for details)*

### Textual Amendments

- F1** S. 119(9) omitted (23.10.2004) by virtue of [Tenements \(Scotland\) Act 2004 \(asp 11\)](#), ss. 25, 34(3), [Sch. 4 para. 18](#) (with s. 33)

## General

### 120 Requirement for dual registration

A deed which, to be duly registered for the purposes of any provision of this Act, requires to be registered against both a benefited property and a burdened property, shall not be registrable against one only of the properties; nor shall a document which includes but does not wholly consist of such a deed.

### 121 Crown application

This Act binds the Crown.

### 122 Interpretation

- (1) In this Act, unless the context otherwise requires—
- “the 1979 Act” means the Land Registration (Scotland) Act 1979 (c. 33);
  - “the 2000 Act” means the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5);
  - “affirmative burden” shall be construed in accordance with section 2(2)(a) of this Act;
  - “ancillary burden” shall be construed in accordance with section 2(4) of this Act;
  - “appointed day” means the day appointed under section 71 of the 2000 Act;
  - “benefited property”—
    - (a) in relation to a real burden, shall be construed in accordance with section 1(2)(b) of this Act; and
    - (b) in relation to a title condition other than a real burden, means the land, or real right in land, to which the right to enforce the title condition is attached;
  - “burdened property”—
    - (a) in relation to a real burden, shall be construed in accordance with section 1(2)(a) of this Act; and
    - (b) in relation to a title condition other than a real burden, means the land, or real right in land, which is subject to the title condition;
  - “community” has the meaning given by section 26(2) of this Act;
  - “community burdens” shall be construed in accordance with section 25 of this Act;
  - “conservation body” means any body prescribed by order under subsection (4) of section 38 of this Act;
  - “conservation burden” shall be construed in accordance with subsection (1) of that section and includes (other than in subsections (1) and (2) of that section) a reference to a real burden the right to enforce which was—
    - (a) preserved by virtue of section 27(1) of the 2000 Act (preservation of right to enforce conservation burden); or

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(b) obtained by virtue of section 27A(1) of that Act (nomination of conservation body or Scottish Ministers to have title to enforce conservation burden);

“constitutive deed” is the deed which sets out the terms of a title condition (or of a prospective title condition) but the expression includes any document in which the terms of the title condition in question are varied;

“deed of conditions” means a deed mentioned in section 32 of the Conveyancing (Scotland) Act 1874 (c. 94) (importation by reference) and registered before the appointed day having been executed in accordance with that section;

“the development management scheme” has the meaning given by section 71(3) of this Act;

“economic development burden” shall be construed in accordance with subsection (1) of section 45 of this Act and includes (other than in subsections (1) to (3) of that section) a reference to a real burden which was converted under section 18B of the 2000 Act (conversion into economic development burden);

“enactment” includes a local and personal or private Act;

“facility burden” means, subject to subsection (2) below, a real burden which regulates the maintenance, management, reinstatement or use of heritable property which constitutes, and is intended to constitute, a facility of benefit to other land (examples of property which might constitute such a facility being without prejudice to the generality of this definition, set out in subsection (3) below);

F2 .....

“health care burden” shall be construed in accordance with subsection (1) of section 46 of this Act and includes (other than in subsections (1) to (3) of that section) a reference to a real burden which was converted under section 18C of the 2000 Act (conversion into health care burden);

“holder”, in relation to a title condition, means the person who has right to the title condition<sup>F3</sup> but does not include a person who has title to enforce it only by virtue of any of paragraphs (a), (b) and (c) of section 8(2) of this Act];

“land” includes—

- (a) heritable property, whether corporeal or incorporeal, held as a separate tenement; and
- (b) land covered with water,

but does not include any estate of *dominium directum*;

“Lands Tribunal” means Lands Tribunal for Scotland;

<sup>F4</sup>“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);]

“maintenance” includes (cognate expressions being construed accordingly)—

- (a) repair or replacement; and
- (b) such demolition, alteration or improvement as is reasonably incidental to maintenance;

“manager”, in relation to related properties, means any person (including an owner of one of those properties or a firm) who is authorised (whether by virtue of this Act or otherwise) to act generally, or for such purposes as may be applicable in relation to a particular authorisation, in respect of those properties;

“manager burden” shall be construed in accordance with section 63(1) of this Act;

“maritime burden” shall be construed in accordance with subsection (1) of section 44 of this Act and includes (other than in that subsection) a reference to any

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real burden in relation to which the Crown has title and interest under section 60(1) of the 2000 Act (preserved right of Crown to maritime burdens);

“midcouple” means such midcouple or link in title as it is competent to specify, under section 5(1) of the Conveyancing (Scotland) Act 1924 (14 & 15 Geo. 5, c.27), in a deduction of title in terms of that Act;

“negative burden” shall be construed in accordance with section 2(2)(b) of this Act;

“notary public” includes, in a case where swearing or affirmation is to take place outwith Scotland, any person duly authorised by the law of the country or territory in question to administer oaths or receive affirmations in that country or territory;

“notice of converted servitude” shall be construed in accordance with section 80(4) and (5) of this Act;

“notice of preservation” shall be construed in accordance with section 50 of this Act;

“notice of termination” shall be construed in accordance with section 20 of this Act;

“owner” shall be construed in accordance with section 123 of this Act;

“personal pre-emption burden” and “personal redemption burden” shall be construed in accordance with section 18A(5) of the 2000 Act;

“personal real burden” shall be construed in accordance with section 1(3) of this Act;

“property” includes unit;

“real burden” has the meaning given by section 1 of this Act except that in construing that section for the purposes of this definition “land” shall be taken to include an estate of *dominium directum*;

“registering”, in relation to any document, means registering an interest in land or information relating to an interest in land (being an interest or information for which that document provides) in the Land Register of Scotland or, as the case may be, recording the document in the Register of Sasines (cognate expressions being construed accordingly);

“renewal date” has the meaning given by section 20(4)(d) of this Act;

“road” has the meaning given by section 151(1) of the Roads (Scotland) Act 1984 (c. 54) (interpretation);

“rural housing body” means any body prescribed by order under subsection (5) of section 43 of this Act;

“rural housing burden” shall be construed in accordance with subsection (1) of that section and includes a personal pre-emption burden the holder of which is a rural housing body;

“send” shall be construed in accordance with section 124 of this Act (cognate expressions being construed accordingly);

“service burden” means a real burden which relates to the provision of services to land other than the burdened property;

“sheltered or retirement housing development” has the meaning given by section 54(3) of this Act;

[<sup>F5</sup>“tenement” has the meaning given by section 26 of the Tenements (Scotland) Act 2004 (asp 11); and references to a flat in a tenement shall be construed accordingly;]

“terminator” shall be construed in accordance with section 20(2) of this Act;

“title condition” means—

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- (a) a real burden;
  - (b) a servitude;
  - (c) an affirmative obligation imposed, in a servitude, on the person who is in right of the servitude;
  - (d) a condition in a registrable lease if it is a condition which relates to the land (but not a condition which imposes either an obligation to pay rent or an obligation of relief relating to the payment of rent);
  - (e) a condition or stipulation—
    - (i) imposed under subsection (2) of section 3 of the Registration of Leases (Scotland) Act 1857 (c. 26) (assignment of recorded leases) in an assignment which has been duly registered; or
    - (ii) contained in a deed registered under subsection (2A) or (5) of that section;
  - (f) a condition in an agreement entered into under section 7 of the National Trust for Scotland Order Confirmation Act 1938 (c.iv); or
  - (g) such other condition relating to land as the Scottish Ministers may, for the purposes of this paragraph, prescribe by order;
- “unit” means any land which is designed to be held in separate ownership (whether it is so held or not); and
- “variation”, in relation to a title condition, includes both—
- (a) imposition of a new obligation; and
  - (b) provision that a property becomes a benefited property,
- (cognate expressions being construed accordingly).
- (2) In so far as it constitutes an obligation to maintain or reinstate which has been assumed—
- (a) by a local or other public authority; or
  - (b) by virtue of any enactment, by a successor body to any such authority,
- a real burden is neither—
- (i) a facility burden; nor
  - (ii) for the purposes of sections 52 to 54(1) of this Act, to be regarded as imposed as mentioned in any of those sections.
- (3) The examples referred to in the definition of “facility burden” in subsection (1) above are—
- (a) a common part of a tenement;
  - (b) a common area for recreation;
  - (c) a private road;
  - (d) private sewerage; and
  - (e) a boundary wall.

#### Textual Amendments

- F2** S. 122(1): definition of “flat” omitted (23.10.2004) by virtue of [Tenements \(Scotland\) Act 2004 \(asp 11\)](#), ss. 25, 34(3), [Sch. 4 para. 19\(a\)](#) (with s. 33)
- F3** S. 122(1): words in definition of “holder” added (22.10.2003) by [The Title Conditions \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2003 \(S.S.I. 2003/503\)](#), art. 2, [Sch. 1 para. 15](#)
- F4** S. 122(1): definition of “local authority” inserted (23.10.2004) by [Tenements \(Scotland\) Act 2004 \(asp 11\)](#), ss. 25, 34(3), [Sch. 4 para. 19\(b\)](#) (with s. 33)

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**F5** S. 122(1): definition of "tenement" substituted (23.10.2004) by [Tenements \(Scotland\) Act 2004 \(asp 11\)](#), ss. 25, 34(3), [Sch. 4 para. 19\(c\)](#) (with s. 33)

## **123 The expression “owner”**

- (1) Subject to subsections (2) and (3) below, in this Act “owner”, in relation to any property, means a person who has right to the property whether or not that person has completed title; but if, in relation to the property (or, if the property is held pro indiviso, any pro indiviso share in the property) more than one person comes within that description of owner, then “owner”—
  - (a) for the purposes of sections 4(2)(b), 6(1)(a), 15, 16, 19, 33(1) and (2) and 35 of this Act, means any person having such right; and
  - (b) for any other purposes means such person as has most recently acquired such right.
- (2) Where a heritable creditor is in lawful possession of security subjects which comprise the property, then “owner”—
  - (a) for the purposes of the sections mentioned in paragraph (a) of subsection (1) above includes, in addition to any such person as is there mentioned, that heritable creditor; and
  - (b) for any other purposes (other than of construing section 1 of this Act) means the heritable creditor.
- (3) In section 60(1) of this Act, “owner” in relation to any property has the meaning given by subsection (1) above except that, for the purposes of this subsection, in that subsection—
  - (a) the words “Subject to subsections (2) and (3) below, in this Act” shall be disregarded; and
  - (b) paragraph (a) shall be construed as if section 60(1) were one of the sections mentioned.

## **124 Sending**

- (1) Where a provision of this Act requires that a thing be sent—
  - (a) to a person it shall suffice, for the purposes of that provision, that the thing be sent to an agent of the person;
  - (b) to an owner of property but only the property is known and not the name of the owner, it shall suffice, for the purposes of that provision, that the thing be sent there addressed to “The Owner” (or using some other such expression, as for example “The Proprietor”).
- (2) Except in subsection (3) below, in this Act any reference to a thing being sent shall be construed as a reference to its being—
  - (a) posted;
  - (b) delivered; or
  - (c) transmitted by electronic means.
- (3) For the purposes of any provision of this Act, a thing posted shall be taken to be sent on the day of posting; and a thing transmitted by electronic means, to be sent on the day of transmission.

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#### **Modifications etc. (not altering text)**

- C1** S. 124 applied by Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42), **Sch. 1 para. 6C** (as inserted (1.11.2003) by Title Conditions (Scotland) Act 2003 (asp 9), **s. 109(4B)** (as that is inserted by The Title Conditions (Scotland) Act 2003 (Consequential Provisions) Order 2003 (S.S.I. 2003/503), **art. 2, Sch. 1 para. 13(c)**); S.S.I. 2003/454, **art. 2(1)**)

#### **125 References to distance**

Where a provision of this Act refers to a property being within a certain distance of another property, the reference is to distance along a horizontal plane, there being disregarded—

- (a) the width of any intervening road if of less than twenty metres; and
- (b) any pertinent of either property.

#### **126 Fees chargeable by Lands Tribunal in relation to functions under this Act**

The Scottish Ministers may, after consultation with the Scottish Committee of the Council on Tribunals, make rules as to the fees chargeable by the Lands Tribunal in respect of that tribunal's functions under this Act.

#### **127 Orders, regulations and rules**

- (1) Any power of the Scottish Ministers under this Act to make orders, regulations or rules shall be exercisable by statutory instrument; and a statutory instrument containing any such orders, regulations or rules, other than an order under section 128(4) or 129(4), shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (2) A statutory instrument containing an order under section 128(4) of this Act shall not be made unless a draft of the instrument has been—
  - (a) laid before; and
  - (b) approved by a resolution of, the Scottish Parliament.

#### **128 Minor and consequential amendments, repeals and power to amend forms**

- (1) Schedule 14 to this Act, which contains minor amendments and amendments consequential upon the provisions of this Act, shall have effect.
- (2) The enactments mentioned in schedule 15 to this Act are repealed to the extent specified.
- (3) The Scottish Ministers may by order amend any of schedules—
  - (a) 2 to 10 and 12 to this Act; and
  - (b) 1 to 11A to the 2000 Act.
- (4) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act or of any order, regulations or rules made under this Act.

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- (5) An order under subsection (4) above may amend or repeal any enactment (including any provision of this Act).

#### Commencement Information

- II** S. 128 wholly in force; s. 128(1)(2) in force for certain purposes at 4.4.2003 and s. 128(3)-(5) in force at 4.4.2003 see s. 129(2)(5); s. 128 otherwise in force at 28.11.2004 by S.S.I. 2003/456, art. 2

## 129 Short title and commencement

- (1) This Act may be cited as the Title Conditions (Scotland) Act 2003.
- (2) Subject to subsections (3) to (5) below, this Act, except this section, shall come into force on the appointed day.
- (3) Sections 63, 66, 67, 86 and 88, except in so far as it inserts a sub-paragraph (ab)(ii) into paragraph 1 of Schedule 1 to the Prescription and Limitation (Scotland) Act 1973 (c. 52), Part 9 for the purposes of any application under section 107(5) of this Act, sections 111, 113, 114, 117, 118, 122 to 124, 126, 127, 128(3) to (5), schedules 12 and 13 and, in schedule 14, paragraph 7(1), (3) and (6) come into force on the day after Royal Assent.
- (4) There shall come into force on such day as the Scottish Ministers may by order appoint, Parts 3 and 6 and sections 106 to 110; and different days may be so appointed for different provisions.
- (5) In so far as—
- (a) it relates to paragraph 7(1), (3) and (6) of schedule 14, section 128(1);
  - (b) it relates to the 2000 Act, section 128(2);
  - (c) it relates to the 2000 Act, schedule 15;
  - (d) is necessary for the purposes of Part 3 and section 63, Part 1,
- shall come into force on the day after Royal Assent.

#### Subordinate Legislation Made

- P1** S. 129(4) power partly exercised: different dates appointed for specified provisions by {S.S.I. 2003/454}, art. 2  
 S. 129(2): 28.11.2004 appointed (by virtue of ss. 122(1), 129(2)) by {S.S.I. 2003/456}, art. 2  
 S. 129(4) power fully exercised: 1.6.2009 appointed for remaining provisions by {S.S.I. 2009/190}, art. 2



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