



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 3

CONSERVATION AND OTHER PERSONAL REAL BURDENS

Conservation burdens

38 Conservation burdens

- (1) On and after the day on which this section comes into force it shall, subject to subsection (2) below, be competent to create a real burden in favour of a conservation body, or of the Scottish Ministers, for the purpose of preserving, or protecting, for the benefit of the public—
 - (a) the architectural or historical characteristics of any land; or
 - (b) any other special characteristics of any land (including, without prejudice to the generality of this paragraph, a special characteristic derived from the flora, fauna or general appearance of the land);and any such burden shall be known as a “conservation burden”.
- (2) If under subsection (1) above the conservation burden is to be created other than by the conservation body or the Scottish Ministers, the consent of—
 - (a) that body to the creation of the burden in its favour; or
 - (b) those Ministers to the creation of the burden in their favour,must be obtained before the constitutive deed is registered.
- (3) It shall not be competent to grant a standard security over a conservation burden.
- (4) The Scottish Ministers may, subject to subsection (5) below, by order, prescribe such body as they think fit to be a conservation body.
- (5) The power conferred by subsection (4) above may be exercised in relation to a body only if the object, or function, of the body (or, as the case may be, one of its objects or functions) is to preserve, or protect, for the benefit of the public such characteristics of any land as are mentioned in paragraph (a) or (b) of subsection (1) above.
- (6) Where the power conferred by subsection (4) above is exercised in relation to a trust, the conservation body shall be the trustees of the trust.

Status: This is the original version (as it was originally enacted).

- (7) The Scottish Ministers may, by order, determine that such conservation body as may be specified in the order shall cease to be a conservation body.

39 Assignment

The right to a conservation burden may be assigned or otherwise transferred to any conservation body or to the Scottish Ministers; and any such assignment or transfer takes effect on registration.

40 Enforcement where no completed title

A conservation burden is enforceable by the holder of the burden irrespective of whether the holder has completed title to the burden.

41 Completion of title

Where the holder of a conservation burden does not have a completed title—

- (a) title may be completed by the holder registering a notice of title; or
- (b) without completing title, the holder may grant—
 - (i) under section 39 of this Act, a deed assigning the right to the burden; or
 - (ii) under section 48 of this Act, a deed discharging, in whole or in part, the burden,

but unless the deed is one to which section 15(3) of the 1979 Act (circumstances where unnecessary to deduce title) applies, it shall be necessary, in the deed, to deduce title to the burden through the midcouples linking the holder to the person who had the last completed title.

42 Extinction of burden on body ceasing to be conservation body

Where—

- (a) the holder of a conservation burden is a conservation body or, as the case may be, two or more such bodies; and
- (b) that body ceases to be such a body, or those bodies cease to be such bodies (whether because an order under section 38(7) of this Act so provides or because the body in question has ceased to exist),

the conservation burden shall, on the body or bodies so ceasing, forthwith be extinguished.

Rural housing burdens

43 Rural housing burdens

- (1) On and after the day on which this section comes into force it shall, subject to subsections (2) and (3) below, be competent to create a real burden which comprises a right of pre-emption in favour of a rural housing body other than by reference to the body's capacity as owner of any land; and any such burden shall be known as a "rural housing burden".

- (2) If under subsection (1) above the rural housing burden is to be created other than by the rural housing body, the consent of that body to the creation of the burden in its favour must be obtained before the constitutive deed is registered.
- (3) It shall not be competent to create a rural housing burden on the sale of a property by virtue of section 61 of the Housing (Scotland) Act 1987 (c. 26) (secure tenant's right to purchase).
- (4) It shall not be competent to grant a standard security over a rural housing burden.
- (5) The Scottish Ministers may, subject to subsection (6) below, by order, prescribe such body as they think fit to be a rural housing body.
- (6) The power conferred by subsection (5) above may be exercised in relation to a body only if the object, or function, of the body (or, as the case may be one of its principal objects or functions) is to provide housing on rural land or to provide rural land for housing.
- (7) Where the power conferred by subsection (5) above is exercised in relation to a trust, the rural housing body shall be the trustees of the trust.
- (8) The Scottish Ministers may, by order, determine that such rural housing body as may be specified in the order shall cease to be a rural housing body.
- (9) In this section, “rural land” means land other than excluded land (“excluded land” having the same meaning as in Part 2 of the Land Reform (Scotland) Act 2003 (asp 2)).
- (10) Sections 39 to 42 of this Act apply in relation to a rural housing burden and a rural housing body as they apply in relation to a conservation burden and a conservation body but with the modifications that in section 39 the words “or to the Scottish Ministers” shall be disregarded and in section 42(b) the reference to an order under section 38(7) of this Act shall be construed as a reference to an order under subsection (8) above.

Maritime burdens

44 Maritime burdens

- (1) On and after the day on which this section comes into force, it shall be competent to create a real burden over the sea bed or foreshore in favour of the Crown for the benefit of the public; and any such burden shall be known as a “maritime burden”.
- (2) The right of the Crown to a maritime burden may not be assigned or otherwise transferred.
- (3) For the purposes of this section—
 - (a) “sea bed” means the bed of the territorial sea adjacent to Scotland; and
 - (b) “territorial sea” includes any tidal waters.

Economic development burdens

45 Economic development burdens

- (1) On and after the day on which this section comes into force it shall, subject to subsection (2) below, be competent to create a real burden in favour of a local authority, or of the Scottish Ministers, for the purpose of promoting economic development; and any such burden shall be known as an “economic development burden”.
- (2) If under subsection (1) above the economic development burden is to be created other than by the local authority or the Scottish Ministers, the consent of that body or those Ministers to the creation of the burden in their favour must be obtained before the constitutive deed is registered.
- (3) An economic development burden may comprise an obligation to pay a sum of money (the sum or the method of determining it being specified in the constitutive deed) to the local authority or the Scottish Ministers as the case may be.
- (4) It shall not be competent—
 - (a) to grant a standard security over; or
 - (b) to assign the right to,an economic development burden.
- (5) Sections 40 and 41(a) and (b)(ii) of this Act apply in relation to an economic development burden as they apply in relation to a conservation burden.
- (6) In subsections (1) to (3) above, “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

Health care burdens

46 Health care burdens

- (1) On and after the day on which this section comes into force it shall, subject to subsection (2) below, be competent to create a real burden in favour of a National Health Service trust, or of the Scottish Ministers, for the purpose of promoting the provision of facilities for health care; and any such burden shall be known as a “health care burden”.
- (2) If under subsection (1) above the health care burden is to be created other than by the trust or the Scottish Ministers, the consent of the trust or those Ministers to the creation of the burden in its or their favour must be obtained before the constitutive deed is registered.
- (3) A health care burden may comprise an obligation to pay a sum of money (the sum or the method of determining it being specified in the constitutive deed) to the trust or the Scottish Ministers as the case may be.
- (4) It shall not be competent—
 - (a) to grant a standard security over; or
 - (b) to assign the right to,a health care burden.

- (5) Sections 40 and 41(a) and (b)(ii) of this Act apply in relation to a health care burden as they apply in relation to a conservation burden.
- (6) In subsection (1) above, “facilities for health care” includes facilities ancillary to health care; as for example (but without prejudice to that generality) accommodation for staff employed to provide health care.

General

47 Interest to enforce

The holder of a personal real burden is presumed to have an interest to enforce the burden.

48 Discharge

- (1) A personal real burden is discharged by registering against the burdened property a deed of discharge granted by or on behalf of the holder of the burden.
- (2) In subsection (1) above, “discharged” means discharged—
 - (a) wholly; or
 - (b) to such extent as may be specified in the deed of discharge.