



# Title Conditions (Scotland) Act 2003

## 2003 asp 9

### PART 4

#### TRANSITIONAL: IMPLIED RIGHTS OF ENFORCEMENT

##### *Extinction of implied rights of enforcement*

#### **49 Extinction**

- (1) Any rule of law whereby land may be the benefited property, in relation to a real burden, by implication (that is to say, without being nominated in the constitutive deed as the benefited property and without being so nominated in any deed into which the constitutive deed is incorporated) shall cease to have effect on the appointed day and a real burden shall not, on and after that day, be enforceable by virtue of such rule; but this subsection is subject to subsection (2) below.
- (2) In relation to a benefited property as respects which, on the appointed day, it is competent (taking such rule of law as is mentioned in subsection (1) above still to be in effect) to register a notice of preservation or of converted servitude, subsection (1) above shall apply with the substitution, for the reference to the appointed day, of a reference to the day immediately following the expiry of the period of ten years beginning with the appointed day.

#### **50 Preservation**

- (1) Subject to subsection (6) below, an owner of land which is a benefited property by virtue of such rule of law as is mentioned in section 49(1) of this Act may, during the period of ten years beginning with the appointed day, execute and duly register, in (or as nearly as may be in) the form contained in schedule 7 to this Act, a notice of preservation as respects the land; and if the owner does so then the land shall continue to be a benefited property after the expiry of that period (in so far as the burdened property, the benefited property and the real burden are the burdened property, the benefited property, and the real burden identified in the notice of preservation).
- (2) The notice of preservation shall—
  - (a) identify the land which is the burdened property (or any part of that land);

*Status: Point in time view as at 19/09/2013.*

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- (b) identify the land which is the benefited property (or any part of that land);
  - (c) where the person registering the notice does not have a completed title to the benefited property, set out the midcouples linking that person to the person who last had such completed title;
  - (d) set out the terms of the real burden; and
  - (e) set out the grounds, both factual and legal, for describing as a benefited property the land identified in pursuance of paragraph (b) above.
- (3) For the purposes of subsection (1) above, a notice is, subject to section 116 of this Act, duly registered only when registered against both properties identified in pursuance of subsection (2)(a) and (b) above.
- (4) A person submitting any notice for registration under this section shall, before doing so, swear or affirm before a notary public that to the best of the knowledge and belief of the person all the information contained in the notice is true.
- (5) For the purposes of subsection (4) above, if the person is—
- (a) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in that subsection, then a legal representative of the person may swear or affirm;
  - (b) not an individual, then any person authorised to sign documents on its behalf may swear or affirm;
- and any reference in that subsection to a person shall be construed accordingly.
- (6) Subsection (1) above does not apply as respects a real burden which has been imposed under a common scheme affecting both the burdened and the benefited property.
- (7) This section is subject to section 115 of this Act.

## **51 Duties of Keeper: amendments relating to unenforceable real burdens**

- (1) Unless one of the circumstances mentioned in subsection (2) below arises, the Keeper of the Registers of Scotland shall not be required to remove from the Land Register of Scotland a real burden which section 49 of this Act makes unenforceable.
- (2) The circumstances are that the Keeper—
- (a) is requested, in an application for registration or rectification, to remove the real burden; or
  - (b) is, under section 9(1) of the 1979 Act (rectification of the register), ordered to do so by the court or the Lands Tribunal,
- and no such request or order shall be competent during that period of ten years which commences with the appointed day.
- (3) During the period mentioned in subsection (2) above a real burden, notwithstanding that it has been so made unenforceable, may at the discretion of the Keeper, for the purposes of section 6(1)(e) of the 1979 Act (entering subsisting real right in title sheet), be taken to subsist; but this subsection is without prejudice to subsection (4) below.
- (4) The Keeper shall not, before the date mentioned in subsection (5) below, remove from the Land Register of Scotland a real burden which is the subject of a notice in respect of which application has been made for a determination by—
- (a) a court; or
  - (b) the Lands Tribunal,

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under section 115(6)(b) of this Act.

- (5) The date is whichever is the earlier of—
- (a) that two months after the final decision on the application; and
  - (b) that prescribed under section 115(6)(ii) of this Act.

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