



Long Leases (Scotland) Act 2012

2012 asp 9

PART 2

CONVERSION OF CERTAIN LEASEHOLD CONDITIONS TO REAL BURDENS

Conversion of conditions to burdens

14 Conversion by nomination of benefited property

- (1) This section applies to a qualifying condition where—
 - (a) at least one conversion condition is met, or
 - (b) the Lands Tribunal makes an order under section 21.
- (2) An entitled person may, before the appointed day, prospectively convert a qualifying condition into a real burden by executing and registering a notice.
- (3) The notice must—
 - (a) be in the prescribed form,
 - (b) set out the title of the entitled person to enforce the qualifying condition,
 - (c) identify the qualifying land, or any part of it, which the entitled person nominates as the burdened property in relation to the real burden,
 - (d) identify the land mentioned in subsection (5), or any part of it, which the entitled person nominates as a benefited property in relation to the burden,
 - (e) in a case where this section applies by virtue of an order under section 21, state that such an order has been made,
 - (f) in any other case, specify which of the conversion conditions is (or are) met,
 - (g) set out the terms of the qualifying condition, and
 - (h) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the entitled person.
- (4) The conversion conditions are—
 - (a) that the land which would by virtue of this section and sections 15 and 16 become a benefited property has on it a permanent building which is in use wholly or mainly as a place of human—
 - (i) habitation, or

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- (ii) resort,
and that building is, at some point, within 100 metres (measuring along a horizontal plane) of the land which would by virtue of this section and sections 15 and 16 become the burdened property,
 - (b) that the qualifying condition comprises a right of pre-emption or of redemption,
 - (c) that the land which would by virtue of this section and sections 15 and 16 become a benefited property comprises—
 - (i) minerals, or
 - (ii) salmon fishings or some other incorporeal property,
 and it is apparent from the terms of the qualifying condition that the condition was included in the lease for the benefit of such land.
- (5) The land referred to in subsection (3)(d) is land, other than the qualifying land, which—
- (a) if the land is not subject to a qualifying or exempt lease, the entitled person is owner of, or
 - (b) if the land is subject to such a lease, the entitled person is tenant of under that lease.
- (6) Where the entitled person holds the entitlement to enforce the qualifying condition otherwise than as landlord—
- (a) the land referred to in subsection (5)(a) is the land to which the entitlement to enforce the condition attaches, and
 - (b) the lease referred to in subsection (5)(b) is the lease to which the entitlement to enforce the condition attaches.

15 Conversion by nomination: registration

- (1) For the purposes of section 14(2), a notice is registered only when registered against both the burdened property and the benefited property.
- (2) Registration under subsection (1) must—
- (a) in the case of the burdened property, be against the title of—
 - (i) the owner of the property, or
 - (ii) the tenant under the qualifying lease of the property, and
 - (b) in the case of a benefited property, be against the title of—
 - (i) the owner of the property, or
 - (ii) if the property in question is subject to a qualifying lease or exempt lease, the tenant under such lease.
- (3) Before submitting any notice for registration under section 14, the entitled person must swear or affirm before a notary public that to the best of the knowledge and belief of the entitled person all the information contained in the notice is true.
- (4) For the purposes of subsection (3), if the entitled 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 entitled person may swear or affirm, or
 - (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 an entitled person is to be construed accordingly.

(5) This section and section 14 are subject to sections 36 and 75.

16 Conversion by nomination: effect

- (1) This section applies in relation to a qualifying condition where—
 - (a) an entitled person registers a notice in accordance with sections 14 and 15, and
 - (b) immediately before the appointed day the qualifying condition is still enforceable by the entitled person (or that person's successor).
- (2) On the appointed day, the qualifying condition becomes a real burden in relation to which—
 - (a) the land identified in pursuance of section 14(3)(c) is the burdened property, and
 - (b) the land identified in pursuance of section 14(3)(d) is a benefited property.

17 Conversion by agreement

- (1) An entitled person may, before the appointed day—
 - (a) serve notice on the tenant under the qualifying lease, that the entitled person seeks to enter into an agreement with the tenant under this section—
 - (i) prospectively converting a qualifying condition into a real burden,
 - (ii) prospectively nominating the qualifying land, or any part of it, as the burdened property in relation to such burden, and
 - (iii) prospectively nominating land mentioned in subsection (2), or any part of that land, as a benefited property in relation to such burden,
 - (b) subject to subsection (5), enter into such an agreement with the tenant, and
 - (c) register that agreement.
- (2) The land referred to in subsection (1)(a)(iii) is land, other than the qualifying land, which—
 - (a) if the land is not subject to a qualifying or exempt lease, the entitled person is owner of, or
 - (b) if the land is subject to such a lease, the entitled person is tenant of under that lease.
- (3) Where the entitled person holds the entitlement to enforce the qualifying condition otherwise than as landlord—
 - (a) the land referred to in subsection (2)(a) is the land to which the entitlement to enforce the condition attaches, and
 - (b) the lease referred to in subsection (2)(b) is the lease to which the entitlement to enforce the condition attaches.
- (4) The notice referred to in subsection (1) must—
 - (a) be in the prescribed form,
 - (b) set out the title of the entitled person to enforce the qualifying condition,
 - (c) identify the land nominated as the burdened property,
 - (d) identify the land nominated as a benefited property,
 - (e) set out the terms of the qualifying condition, and

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- (f) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the entitled person.
- (5) If the entitled person and the tenant think fit they may, by the agreement, modify the qualifying condition or any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the entitled person (or both the qualifying condition and any such counter-obligation).
- (6) An agreement mentioned in subsection (1)(b) must be a written agreement which—
 - (a) expressly states that it is made under this section, and
 - (b) includes all the information, other than that relating to service, required to be set out in completing the notice the form of which is prescribed under subsection (4)(a).
- (7) This section is subject to section 36.

18 Conversion by agreement: registration

- (1) For the purposes of section 17(1), an agreement is registered only when registered against both the burdened property and the benefited property.
- (2) Registration under subsection (1) must—
 - (a) in the case of the burdened property, be against the title of—
 - (i) the owner of the property, or
 - (ii) the tenant under the qualifying lease of the property, and
 - (b) in the case of a benefited property, be against the title of—
 - (i) the owner of the property, or
 - (ii) if the property in question is subject to a qualifying lease or exempt lease, the tenant under such lease.

19 Conversion by agreement: effect

- (1) This section applies in relation to a qualifying condition where—
 - (a) sections 17(1)(b) and (c) and (6) and 18 are complied with, and
 - (b) immediately before the appointed day the qualifying condition is still enforceable by the entitled person (or that person's successor).
- (2) On the appointed day, the qualifying condition becomes a real burden in relation to which—
 - (a) the land identified in pursuance of section 17(4)(c) is the burdened property, and
 - (b) the land identified in pursuance of section 17(4)(d) is a benefited property.

20 Conversion by agreement: title not completed

- (1) Subsection (2) applies for the purposes of section 17 where—
 - (a) the entitled person has not completed title to—
 - (i) the property by virtue of which such person is entitled to enforce a qualifying condition, or
 - (ii) the land nominated as a benefited property, and

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- (b) section 101 of the Land Registration etc. (Scotland) Act 2012 (asp 5) (circumstances where unnecessary to deduce title) does not apply.
- (2) The entitled person may enter into an agreement under section 17 only if in the agreement the entitled person deduces title from the person who appears in the Register of Sasines as having the last recorded title to the interest in question.
- (3) Subsection (4) applies for the purposes of section 17 where—
 - (a) the tenant has not completed title to the qualifying lease, and
 - (b) section 101 of the Land Registration etc. (Scotland) Act 2012 (asp 5) (circumstances where unnecessary to deduce title) does not apply.
- (4) The tenant may enter into an agreement under section 17 only if in the agreement the tenant deduces title from the person who appears in the Register of Sasines as having the last recorded title to the interest in question.