



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Status: This is the original version (as it was originally enacted).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