
EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made in consequence of the provisions of the Title Conditions (Scotland) Act 2003 (“the 2003 Act”). In particular section 71 of the 2003 Act enables the owner of land to apply a scheme of rules known as the Development Management Scheme (“the Scheme”) set out in this Order to a development by registering a deed of application in the appropriate Scottish property register. The Order comes into force on 1st June 2009.

In terms of article 3 the Scheme is generally made up of the rules contained in Schedule 1 to the Order but in relation to a particular development the Scheme will comprise those rules as applied with any variations made in the deed of application registered under section 71 of the 2003 Act.

Article 4 provides that the owners' association for a development is established on the date on which the Scheme takes effect for that development and that on being established the association is a body corporate.

The rules of the Scheme have a close functional resemblance to real burdens, particularly to community burdens within the meaning of the 2003 Act. Article 5 operates to apply various provisions of the 2003 Act to the rules of the Scheme as those provisions apply to community burdens.

Article 6 makes provision for variation of the Scheme by a deed of application. The Scheme as applied to a particular development may be subsequently varied in accordance with articles 7 to 9.

The provisions for variation mirror those contained in sections 32 to 37 the 2003 Act in respect of community burdens.

The rules of the Scheme are enforceable by the owners' association (rule 3.5 of the Scheme). Article 10 enables rights of enforcement to be conferred on the owners of individual units.

Article 11 provides that a deed of variation need not be granted in favour of a person and that it may be registered by the granter or the owner of any unit burdened by the rule to be varied or discharged.

Article 12 confers rights on creditors of the association to recover a debt from members of the association where the association is being or has been wound up and where the creditor is not able to recover the debt from the owners association in the circumstances set out in article 13.

Article 14 provides a means by which a decision made by the owners' association can be challenged. A member has the right to make a summary application to the sheriff court for the annulment of that decision.

Article 15 gives the sheriff powers, on application by a member, to make orders relating to the operation of the Scheme or the provisions of the Order as respects a development. The sheriff may grant the order sought or any other order as the sheriff may think necessary or expedient. Any party to a dispute may appeal to the Court of Session on a point of law.

Article 16 requires the manager to provide a certificate on request in relation to the amount of outstanding service charge and limits the liability for service charge of a purchaser of a property who obtains such a certificate.

Article 17 makes provision for continuation of rules of the Scheme which relate to winding up should the Scheme cease to apply to a development.

Article 18 defines who is the owner of a unit and article 19 makes provision for how and when things may be sent in accordance with the Order. Article 20 defines “scheme property”.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Article 21 ensures that rules 14 and 19 of the Scheme apply to tenements as default rules where the Scheme as applied to the development does not contain equivalent rules.

Article 22 confers jurisdiction on the Lands Tribunal for Scotland in relation to the discharge or variation of the Scheme and the determination of the validity, applicability or enforcement of a rule of the Scheme.

Article 23 allows owners of 25% of the units in a development to apply to the Lands Tribunal to vary or discharge the Scheme. Once an application has been received, the Lands Tribunal must notify interested parties. Article 24 sets out who are to be notified and the means by which notification should be given. Article 25 sets out the content of the notice. Article 26 provides that the owners' association and any member are entitled to make representations. Article 27 sets out how representations are to be made. The Tribunal must consider applications for variation, discharge or preservation on their merits. Article 28 sets out test and factors for the Lands Tribunal in making a decision. Article 29 provides that the Lands Tribunal has a discretion as to expenses, but directs the Tribunal to have some regard to the principle that expenses follow success. Article 30 sets out when an order of the Tribunal takes effect and article 31 makes provision for the registration of such orders.

Schedule 1 to the Order sets out the rules of the Development Management Scheme. It is divided into four parts and consists of 22 rules which, other than those in Part 2, may be varied. Part 1 consists of a single rule (rule 1) which explains the meaning of some of the words used in the Scheme.

Under the Scheme the development is managed by an association of all the owners. Part 2 includes provisions for the establishment of the owners' association (rule 2) and its functions and powers (rule 3). Part 2 also makes provision in rule 4 for the powers and main duties of a manager and in rule 5 for how the owners' association executes documents. Rule 6 makes provision for the winding up of the owners' association.

Part 3 of the Scheme makes provision for the management of the development. Rule 7 provides how a manager is to be appointed and rule 8 sets out that manager's duties. Rules 9 to 13 provide for the calling of annual and other general meetings, the quorum at such meetings and voting and procedure at such meetings. Rule 14 enables a member of the association to instruct or carry out emergency work and to recover the cost. In terms of article 21(1) of the Order this rule will, where the development in question is a tenement, be treated as forming part of the Scheme even if not applied by the deed of application to the extent that the Scheme as applied does not include equivalent provision. Rule 15 enables the association to form an advisory committee. Rule 16 provides how deeds of variation are to be executed and rule 17 sets out how funds are to be distributed if the association is wound up.

Part 4 relates to the financial management of the association. Under rule 18 the manager is to prepare a budget. Rule 18 also provides for consideration and approval of the budget by the association. Rule 19 sets out how service charge is to be determined and collected and rule 20 allows for additional service charge to be levied where needed to meet the expenditure of the association. Rule 21 states how funds are to be held for the owners' association. Rule 22 sets out methods by which notices or other documents may be sent in accordance with the Scheme.

Schedule 2 to the Order comprises the form of notice to be given under article 9(2) to the members of the association where it is proposed to vary the Scheme by means of a deed of variation under article 8.