
STATUTORY INSTRUMENTS

2009 No. 729

**The Title Conditions (Scotland) Act 2003
(Development Management Scheme) Order 2009**

PART 5

Challenges to operation of the Scheme

Application to sheriff for annulment of decisions made under Scheme

14.—(1) A member may, by summary application to the sheriff, seek an order annulling a decision made by the association at a general meeting provided that the member was not, at the time the decision was made, in favour of the decision.

(2) An application by a member under paragraph (1) is to be made—

- (a) in a case where the decision was made at a meeting attended by the member, not later than twenty eight days after the date of that meeting; or
- (b) in any other case, not later than twenty eight days after the date on which notice of the making of the decision was sent to the owner for the time being of the unit in question.

(3) The sheriff may, if satisfied that the decision—

- (a) is not in the best interests of all the members taken as a group; or
- (b) is unfairly prejudicial to one or more of the members,

make an order annulling the decision (in whole or in part).

(4) Where an application under paragraph (1) is made as respects a decision to carry out maintenance, improvements or alterations, the sheriff is, in considering whether to make an order under paragraph (3), to have regard to—

- (a) the age of the property which is to be maintained, improved or, as the case may be, altered;
- (b) its condition;
- (c) the likely cost of any such maintenance, improvements or alterations; and
- (d) the reasonableness of that cost.

(5) Where the sheriff makes an order under paragraph (3) annulling a decision (in whole or in part), the sheriff may make such other, consequential, order as the sheriff thinks fit (for example, an order as respects the liability of members for any costs already incurred).

(6) A party may, not later than fourteen days after the date of—

- (a) an order under paragraph (3); or
- (b) an interlocutor dismissing an application under paragraph (1),

appeal to the Court of Session on a point of law.

(7) A decision of the Court of Session on an appeal under paragraph (6) shall be final.

(8) Where a member is entitled to make an application under paragraph (1) in relation to any decision, no step shall be taken to implement that decision unless—

- (a) the period specified in paragraph (2) within which such an application is to be made has expired without such an application having been made and notified to the members; or
 - (b) where such an application has been so made and notified—
 - (i) the application has been disposed of and either the period specified in paragraph (6) within which an appeal against the sheriff’s decision has expired without such an appeal having been made or such an appeal has been made and disposed of; or
 - (ii) the application has been abandoned.
- (9) Paragraph (8) does not apply to a decision relating to work which requires to be carried out urgently.
- (10) For the purposes of any application under paragraph (1) the defender shall be the association.

Application to sheriff for order resolving certain disputes

- 15.—**(1) Any member may by summary application apply to the sheriff for an order relating to any matter concerning the operation of—
- (a) the Development Management Scheme which applies as respects the development; or
 - (b) any provision of this Order in its application as respects the development.
- (2) Where an application is made under paragraph (1) the sheriff may, subject to such conditions (if any) as the sheriff thinks fit—
- (a) grant the order craved; or
 - (b) make such other order as the sheriff considers necessary or expedient.
- (3) A party may not later than fourteen days after the date of—
- (a) an order under paragraph (2); or
 - (b) an interlocutor dismissing an application under paragraph (1),
- appeal to the Court of Session on a point of law.
- (4) A decision of the Court of Session on an appeal under paragraph (3) shall be final.