



# Title Conditions (Scotland) Act 2003

2003 asp 9

## TITLE CONDITIONS (SCOTLAND) ACT 2003

### PART 1

#### REAL BURDENS: GENERAL

##### *Meaning and creation*

- 1 The expression “real burden”
- 2 Affirmative, negative and ancillary burdens
- 3 Other characteristics
- 4 Creation
- 5 Further provision as respects constitutive deed
- 6 Further provision as respects creation

##### *Duration, enforceability and liability*

- 7 Duration
- 8 Right to enforce
- 9 Persons against whom burdens are enforceable
- 10 Affirmative burdens: continuing liability of former owner
- 11 Affirmative burdens: shared liability

##### *Division of benefited or burdened property*

- 12 Division of a benefited property
- 13 Division of a burdened property

##### *Construction*

- 14 Construction

##### *Extinction*

- 15 Discharge
- 16 Acquiescence
- 17 Further provision as regards extinction where no interest to enforce

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*Changes to legislation:* There are outstanding changes not yet made by the legislation.gov.uk editorial team to Title Conditions (Scotland) Act 2003. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

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- 18 Negative prescription
- 19 Confusio not to extinguish real burden

#### *Termination*

- 20 Notice of termination
- 21 Intimation
- 22 Oath or affirmation before notary public
- 23 Prerequisite certificate for registration of notice of termination
- 24 Effect of registration of notice of termination

### **PART 2**

#### COMMUNITY BURDENS

##### *Meaning, creation etc.*

- 25 The expression “community burdens”
- 26 Creation of community burdens: supplementary provision
- 27 Effect on units of statement that burdens are community burdens

##### *Management of community*

- 28 Power of majority to appoint manager etc.
- 29 Power of majority to instruct common maintenance
- 30 Owners' decision binding
- 31 Remuneration of manager

##### *Variation, discharge etc.*

- 32 The expressions “affected unit” and “adjacent unit”
- 33 Majority etc. variation and discharge of community burdens
- 34 Variation or discharge under section 33: intimation
- 35 Variation and discharge of community burdens by owners of adjacent units
- 36 Variation and discharge under section 35: intimation
- 37 Preservation of community burden in respect of which deed of variation or discharge has been granted as mentioned in section 35(1)

### **PART 3**

#### CONSERVATION AND OTHER PERSONAL REAL BURDENS

##### *Conservation burdens*

- 38 Conservation burdens
- 39 Assignment
- 40 Enforcement where no completed title
- 41 Completion of title
- 42 Extinction of burden on body ceasing to be conservation body

##### *Rural housing burdens*

- 43 Rural housing burdens

##### *Maritime burdens*

- 44 Maritime burdens

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### *Economic development burdens*

- 45 Economic development burdens

### *Health care burdens*

- 46 Health care burdens

### *General*

- 47 Interest to enforce  
48 Discharge

## **PART 4**

### TRANSITIONAL: IMPLIED RIGHTS OF ENFORCEMENT

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

- 49 Extinction  
50 Preservation  
51 Duties of Keeper: amendments relating to unenforceable real burdens

#### *New implied rights of enforcement*

- 52 Common schemes: general  
53 Common schemes: related properties  
54 Sheltered housing  
55 Grant of deed of variation or discharge of community burdens relating to sheltered or retirement housing: community consultation notice  
56 Facility burdens and service burdens  
57 Further provisions as respects rights of enforcement  
58 Duty of Keeper to enter on title sheet statement concerning enforcement rights

## **PART 5**

### REAL BURDENS: MISCELLANEOUS

- 59 Effect of extinction etc. on court proceedings  
60 Grant of deed where title not completed: requirements  
61 Contractual liability incidental to creation of real burden  
62 Real burdens of combined type  
63 Manager burdens  
64 Overriding power to dismiss and appoint manager  
65 Manager: transitory provisions  
66 The expression “related properties”  
67 Discharge of rights of irritancy  
68 Requirement for repetition etc. of terms of real burden in future deed  
69 Further provision as respects deeds of variation and of discharge  
70 Duty to disclose identity of owner

## **PART 6**

### DEVELOPMENT MANAGEMENT SCHEME

- 71 Development management scheme  
72 Application of other provisions of this Act to rules of scheme

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- 73 Disapplication
- 74 Intimation of proposal to register deed of disapplication

#### **PART 7**

##### SERVITUDES

###### *Positive servitudes*

- 75 Creation of positive servitude by writing: deed to be registered
- 76 Disapplication of requirement that positive servitude created in writing be of a known type
- 77 Positive servitude of leading pipes etc. over or under land
- 78 Discharge of positive servitude

###### *Negative servitudes*

- 79 Prohibition on creation of negative servitude

###### *Transitional*

- 80 Negative servitudes to become real burdens
- 81 Certain real burdens to become positive servitudes

#### **PART 8**

##### PRE-EMPTION AND REVERSION

###### *Pre-emption*

- 82 Application and interpretation of sections 83 and 84
- 83 Extinction following pre-sale undertaking
- 84 Extinction following offer to sell
- 85 Ending of council's right of pre-emption as respects certain churches

###### *Reversion*

- 86 Reversions under School Sites Act 1841
- 87 Right to petition under section 7 of Entail Sites Act 1840
- 88 Prescriptive period for obligations arising by virtue of 1841 Act or 1840 Act
- 89 Repeal of Reversion Act 1469

#### **PART 9**

##### TITLE CONDITIONS: POWERS OF LANDS TRIBUNAL

- 90 Powers of Lands Tribunal as respects title conditions
- 91 Special provision as to variation or discharge of community burdens
- 92 Early application for discharge: restrictive provisions
- 93 Notification of application
- 94 Content of notice
- 95 Persons entitled to make representations
- 96 Representations
- 97 Granting unopposed application for discharge or renewal of real burden
- 98 Granting other applications for variation, discharge, renewal or preservation of title condition
- 99 Granting applications as respects development management schemes

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- 100 Factors to which the Lands Tribunal are to have regard in determining applications etc.
- 101 Regulation of applications to Lands Tribunal
- 102 Referral to Lands Tribunal of notice dispute
- 103 Expenses
- 104 Taking effect of orders of Lands Tribunal etc.

## **PART 10**

### MISCELLANEOUS

#### *Consequential alterations to Land Register*

- 105 Alterations to Land Register consequential upon registering certain deeds

#### *Compulsory acquisition of land*

- 106 Extinction of real burdens and servitudes etc. on compulsory acquisition of land
- 107 Extinction of real burdens and servitudes etc. where land acquired by agreement

#### *Amendments*

- 108 Amendment of Church of Scotland (Property and Endowments) (Amendment) Act 1933
- 109 Amendment of Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947
- 110 Amendment of Forestry Act 1967
- 111 Amendment of Conveyancing and Feudal Reform (Scotland) Act 1970
- 112 Amendment of Land Registration (Scotland) Act 1979
- 113 Amendment of Enterprise and New Towns (Scotland) Act 1990
- 114 Amendment of Abolition of Feudal Tenure etc. (Scotland) Act 2000

#### *Miscellaneous*

- 115 Further provision as respects notices of preservation or of converted servitude
- 116 Benefited property outwith Scotland
- 117 Pecuniary real burdens
- 118 Common interest

## **PART 11**

### SAVINGS, TRANSITIONAL AND GENERAL

#### *Savings and transitional provisions etc.*

- 119 Savings and transitional provisions etc.

#### *General*

- 120 Requirement for dual registration
- 121 Crown application
- 122 Interpretation
- 123 The expression “owner”
- 124 Sending

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- 125 References to distance
- 126 Fees chargeable by Lands Tribunal in relation to functions under this Act
- 127 Orders, regulations and rules
- 128 Minor and consequential amendments, repeals and power to amend forms
- 129 Short title and commencement

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SCHEDULE 1 — Form importing terms of title conditions  
There are imported the terms of the title conditions specified...

SCHEDULE 2 — Form of notice of termination

SCHEDULE 3 — Form of affixed notice relating to termination

SCHEDULE 4 — Form of notice of proposal to register deed of variation or discharge

SCHEDULE 5 — Further form of notice of proposal to register deed of variation or discharge of community burden: sent version

SCHEDULE 6 — Further form of notice of proposal to register deed of variation or discharge of community burden: affixed version

SCHEDULE 7 — Form of notice of preservation

SCHEDULE 8 — Community consultation notice

SCHEDULE 9 — Form of notice of converted servitude

SCHEDULE 10 — Form of undertaking

SCHEDULE 11 — Title conditions not subject to discharge by Lands Tribunal

- 1 An obligation, however constituted, relating to the right to work...
- 2 In so far as enforceable by or on behalf of—...
- 3 An obligation created or imposed in or in relation to...

SCHEDULE 12 — Form of application for relevant certificate

SCHEDULE 13 — Amendment of Abolition of Feudal Tenure etc. (Scotland) Act 2000

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- 1 The 2000 Act shall be amended in accordance with the...
- 2 In section 17 (extinction of superior's rights)—
- 3 In section 18 (reallotment of real burden by nomination of...
- 4 In section 20 (reallotment of real burden by order of...
- 5 In section 25 (counter-obligations on reallotment)— (a) for the words...
- 6 In section 27 (notice preserving right to enforce conservation burden)  
—...
- 7 In section 42 (further provision as respects certain sections of...
- 8 In section 43 (notices and agreements under certain sections: extent...
- 9 In section 46(2) (discretion of Keeper in relation to entries...
- 10 In section 49 (interpretation of Part 4)—
- 11 In section 54 (extinction of superior's rights and obligations qua...
- 12 In section 56 (extinction etc. of certain payments analogous to...
- 13 In section 73 (feudal terms in enactments and documents: construction...
- 14 In section 75 (saving for contractual rights) the existing words...
- 15 In section 77 (short title and commencement)—
- 16 After schedule 5 there shall be inserted— SCHEDULE 5A Form...
- 17 In schedule 8 (form of notice preserving conservation body's or...
- 18 After schedule 8 there shall be inserted— SCHEDULE 8A Form...
- 19 After schedule 11 there shall be inserted— SCHEDULE 11A Form...
- 20 In schedule 12 (minor and consequential amendments), in paragraph  
9(17),...

#### SCHEDULE 14 — Minor and consequential amendments

- 1 (1) Section 3 of the Registration of Leases (Scotland) Act...
- 2 In section 138 of the Titles to Land Consolidation (Scotland)...
- 3 (1) The Conveyancing (Scotland) Act 1924 shall be amended in...
- 4 (1) The Conveyancing and Feudal Reform (Scotland) Act 1970 shall...
- 5 (1) The Prescription and Limitation (Scotland) Act 1973 shall be...
- 6 In section 2 of the Land Tenure Reform (Scotland) Act...
- 7 (1) The 1979 Act shall be amended in accordance with...
- 8 In section 17 of the Ancient Monuments and Archaeological Areas...
- 9 In section 23 of the Health and Social Services and...
- 10 In Schedule 3 to the Further and Higher Education (Scotland)...
- 11 In section 16(6) of the Crofters (Scotland) Act 1993 (provisions...
- 12 In section 58(1) of the Standards in Scotland's Schools etc...
- 13 In each of sections 1(1) (application to suspend enforcement of...

#### SCHEDULE 15 — Repeals

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 2 applied by [S.I. 2009/729 art. 5\(1\)\(3\)\(4\)](#)
- s. 3 applied by [S.I. 2009/729 art. 5\(1\)\(3\)\(4\)](#)
- s. 3(8) text amended by [2004 asp 11 Sch. 4 para. 2](#)
- s. 4 text amended by [2004 asp 11 Sch. 4 para. 3](#)
- s. 4(5) excluded by [S.S.I. 2010/188 art. 31\(3\)](#)
- s. 4(7) text amended by [S.S.I. 2003/503 Sch. 1 para. 7](#)
- s. 5 applied by [S.I. 2009/729 art. 5\(1\)\(3\)\(4\)](#)
- s. 8(2)(b)(i) text amended by [S.S.I. 2006/379 art. 3\(a\)](#)
- s. 8(5) substituted by [S.S.I. 2006/379 art. 3\(b\)](#)
- s. 10 applied by [S.I. 2009/729 art. 5\(1\)\(3\)\(4\)](#)
- s. 10(2) text amended by [2004 asp 11 Sch. 4 para. 4\(a\)](#)
- s. 10(2A)-(2B) inserted by [2004 asp 11 Sch. 4 para. 4\(b\)](#)
- s. 10(5) added by [2004 asp 11 Sch. 4 para. 4\(c\)](#)
- s. 11 applied by [S.I. 2009/729 art. 5\(1\)\(3\)\(4\)](#)
- s. 11(3A) inserted by [2004 asp 11 Sch. 4 para. 6](#)
- s. 13 applied by [S.I. 2009/729 art. 5\(1\)\(3\)\(4\)](#)
- s. 14 applied by [S.I. 2009/729 art. 5\(1\)\(3\)\(4\)](#)
- s. 16 applied by [S.I. 2009/729 art. 5\(1\)\(3\)\(4\)](#)
- s. 18 applied by [S.I. 2009/729 art. 5\(1\)\(3\)\(4\)](#)
- s. 21(6)(7) amendment to earlier commencing provision [2003 asp 9 s. 109\(3\)](#) by [S.S.I. 2003/503 Sch. 1 para. 13\(a\)\(b\)](#)
- s. 21(6)(7) applied by [1947 c. 42 Sch. 1 para. 3\(3B\)](#) (as inserted) by [2003 asp 9 s. 109\(3\)](#)
- s. 21(6)(7) applied by [1967 c. 10 Sch. 5 para. 2\(1C\)](#) (as inserted) by [2003 asp 9 s. 110\(2\)](#)
- s. 25(1)(a) text amended by [2004 asp 11 Sch. 4 para. 7](#)
- s. 29(2)(b) text amended by [2004 asp 11 Sch. 4 para. 8\(a\)\(i\)](#)
- s. 29(2)(b)(ii) substituted by [2004 asp 11 Sch. 4 para. 8\(a\)\(i\)](#)
- s. 29(2)(c) omitted by [2004 asp 11 Sch. 4 para. 8\(a\)\(ii\)](#)
- s. 29(3A)-(3B) inserted by [2004 asp 11 Sch. 4 para. 8\(b\)](#)
- s. 29(4) text amended by [2004 asp 11 Sch. 4 para. 8\(c\)](#)
- s. 29(6A) inserted by [2004 asp 11 Sch. 4 para. 8\(d\)](#)
- s. 29(7)(b)(i) text amended by [2004 asp 11 Sch. 4 para. 8\(e\)\(i\)](#)
- s. 29(7)(b)(ii) text amended by [2004 asp 11 Sch. 4 para. 8\(e\)\(ii\)](#)
- s. 29(7A) inserted by [2004 asp 11 Sch. 4 para. 8\(f\)](#)
- s. 29(8) text amended by [2004 asp 11 Sch. 4 para. 8\(g\)](#)
- s. 29(10) inserted by [2004 asp 11 Sch. 4 para. 8\(h\)](#)
- s. 33(1)(b) text amended by [2004 asp 11 Sch. 4 para. 10\(a\)](#)
- s. 33(2)(a) text amended by [2004 asp 11 Sch. 4 para. 10\(b\)](#)
- s. 35(1) text amended by [2004 asp 11 Sch. 4 para. 11](#)
- s. 37(2)(b) text amended by [S.S.I. 2003/503 Sch. 1 para. 8](#)
- s. 43(1) text amended by [2004 asp 11 Sch. 4 para. 12\(a\)](#)
- s. 43(6) text amended by [2004 asp 11 Sch. 4 para. 12\(b\)](#)
- s. 45(6) omitted by [2004 asp 11 Sch. 4 para. 13](#)
- s. 46(1) text amended by [2004 asp 7 Sch. 2](#)
- s. 46(2) text amended by [2004 asp 7 Sch. 2](#)
- s. 46(3) text amended by [2004 asp 7 Sch. 2](#)
- s. 53(3A) inserted by [2004 asp 11 Sch. 4 para. 14](#)
- s. 59-61 applied by [S.I. 2009/729 art. 5\(1\)\(3\)\(4\)](#)
- s. 67 applied by [S.I. 2009/729 art. 5\(1\)\(3\)\(4\)](#)
- s. 68 excluded by [S.I. 2009/729 art. 5\(2\)](#)

- s. 69 excluded by S.I. 2009/729 art. 5(2)
- s. 70 applied by S.I. 2009/729 art. 5(1)(3)(4)
- s. 75 excluded by 2006 asp 13 s. 44(2)
- s. 75 excluded by 2007 asp 1 s. 42(2)
- s. 75 excluded by 2007 asp 16 s. 55(2)
- s. 75 excluded by 2007 asp 19 s. 37(2)
- s. 75 excluded by 2007 asp 19 s. 54(2)
- s. 75 excluded by S.S.I. 2010/188 art. 31(3)
- s. 75(1) excluded by 2011 asp 2 s. 27(2)
- s. 90 excluded by S.S.I. 2010/188 art. 17(5)
- s. 90(6) text amended by S.S.I. 2003/503 Sch. 1 para. 9(a)
- s. 90(7)(a) text amended by S.S.I. 2003/503 Sch. 1 para. 9(b)
- s. 90(8A) inserted by S.S.I. 2003/503 Sch. 1 para. 9(c)
- s. 90(8A) text amended by 2004 asp 11 Sch. 4 para. 15
- s. 97(4) applied by S.S.I. 2003/452 rule 28(1)
- s. 98 excluded by S.I. 2009/729 art. 5(2)
- s. 98(b)(i) text amended by 2004 asp 11 Sch. 4 para. 16
- s. 99(3) applied by S.S.I. 2003/452 rule 28(1)
- s. 99(4)(a) text amended by 2004 asp 11 Sch. 4 para. 17
- s. 99(4)(a) text amended by S.S.I. 2003/503 Sch. 1 para. 10
- s. 100 excluded by S.I. 2009/729 art. 5(2)
- s. 103 applied by S.S.I. 2003/452 rule 28(1)
- s. 104 excluded by S.I. 2009/729 art. 5(2)
- s. 104(1) text amended by 2007 c. 15 Sch. 8 para. 57
- s. 104(3) text amended by S.S.I. 2003/503 Sch. 1 para. 11
- s. 105 applied by S.I. 2009/729 art. 5(1)(3)(4)
- s. 106 applied by 2007 asp 19 s. 51
- s. 106 applied by S.S.I. 2010/188 art. 32
- s. 106(1) text amended by S.S.I. 2003/503 Sch. 1 para. 12(a)
- s. 106(4A) inserted by S.S.I. 2003/503 Sch. 1 para. 12(b)
- s. 109(3) text amended by S.S.I. 2003/503 Sch. 1 para. 13(a)(b)
- s. 109(4A)(4B) inserted by S.S.I. 2003/503 Sch. 1 para. 13(c)
- s. 109(5) text amended by S.S.I. 2003/503 Sch. 1 para. 13(d)
- s. 110(2) text amended by S.S.I. 2003/503 Sch. 1 para. 14
- s. 119(9) omitted by 2004 asp 11 Sch. 4 para. 18
- s. 122(1) text amended by 2004 asp 11 Sch. 4 para. 19
- s. 122(1) text amended by S.S.I. 2003/503 Sch. 1 para. 15
- s. 124 applied by 1947 c. 42 Sch. 1 para. 6C as inserted by 2003 asp 9 s. 109(4B) (as inserted) by S.S.I. 2003/503 Sch. 1 para. 13(c)
- s. 126 text amended by 2007 c. 15 Sch. 8 para. 58
- s. 128(3)(a) text amended by S.S.I. 2004/551 art. 2(2)

**Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:**

- Act applied by S.S.I. 2010/188 art. 17(4)
- Act modified by S.S.I. 2010/188 art. 38(4)

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- s. 10A inserted by 2004 asp 11 Sch. 4 para. 5
- s. 31A inserted by 2004 asp 11 Sch. 4 para. 9
- s. 46A inserted by 2009 asp 12 s. 68
- Sch. 1A inserted by 2004 asp 11 Sch. 4 para. 20
- Sch. 1A text amended by S.S.I. 2004/552 art. 2

**Commencement Orders yet to be applied to the Title Conditions (Scotland) Act 2003:**

Commencement Orders bringing provisions within this Act into force:

- S.S.I. 2009/190 art. 2 commences (2003 asp 9)

Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2007/2709 art. 2-6 commences (2007 c. 15)
- S.S.I. 2003/454 art. 2 commences (2003 asp 9)
- S.S.I. 2009/341 art. 2 commences (2009 asp 12)
- S.S.I. 2011/38 art. 2 Sch. commences (2011 asp 2)