

# TITLE CONDITIONS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1: Real Burdens: General

##### *Section 20: Notice of termination*

106. Sections 20 to 24 introduce a completely new termination procedure for real burdens which are at least 100 years old. *Subsection (1)* of section 20 sets out the essential criteria. The burden must be at least 100 years old. The 100 years run from the date of registration of the constitutive deed. Normally this would be the date of registration of the disposition or feu disposition creating the burden but if the constitutive deed is a deed of conditions the 100 year period begins on the registration of the deed of conditions even if the burdens are not in fact imposed until a later date. For this purpose variations or renewals (whether by charter of novodamus or judicially, under section 90(1)(b)) are disregarded. If, for example, a burden was created in 1900 and renewed or waived to a certain extent in 1950, the relevant date would still be 1900. The procedure may be used by any owner of the burdened property (including a *pro indiviso* owner) or any other person (such as a tenant) against whom the burden is enforceable. It comprises two stages: intimation is given under section 21 of an intention to register a notice of termination, and the notice is then executed and registered under section 24. If there are no applications to renew the burden the notice of termination may be submitted for registration. A notice of termination cannot be registered unless a certificate is endorsed on it by the Lands Tribunal under section 23. The form of notice of termination is provided in schedule 2.
107. *Subsection (2)* makes clear that an owner (or other person) can continue with a termination process initiated by a predecessor in title. An owner might begin the process of termination, but sell the burdened property before it is complete. The new owner would be able to step into the process. ‘Terminator’ is used throughout this group of sections to refer to the person who is currently using the procedure.
108. The termination procedure is not available for all burdens. *Subsection (3)* sets out the exclusions. They include facility burdens (defined in section 122(1)). These burdens regulate the maintenance, use or management of a common facility. Conservation, maritime, and service burdens are also protected. Paragraph (e) excludes the title conditions that are excluded from the jurisdiction of the Lands Tribunal under section 90(3). These are specified in schedule 11.
109. *Subsection (4)* specifies the content of a notice of termination. A statutory form is given in schedule 2. Paragraph (c) makes clear that partial termination is permitted (and see also section 24(1)). Paragraphs (e) and (f) require information about intimation, both in general terms and also in the form of a list of those to whom intimation was sent. This will allow recipients to contact each other and consider the possibility of a joint challenge. There is no requirement to identify the benefited property or properties, and in practice these may often be unknown to the terminator.

*These notes relate to the Title Conditions (Scotland) Act  
2003 (asp 9) which received Royal Assent on 3 April 2003*

110. *Subsection (5)* provides that the renewal date stipulated in the notice must be not less than eight weeks after the date of last intimation. The renewal date is, ordinarily, the last day on which the notice may be opposed, by application to the Lands Tribunal for renewal of the burden. An application can only be made after the renewal date with the consent of the terminator (section 90(4)(a)) and then must still be made before the Lands Tribunal have endorsed a certificate on the notice (section 90(4)(b)). The renewal date must have previously appeared in the notice which is sent for the purposes of intimation.
111. *Subsection (6)* makes clear that a single notice can be used in respect of more than one burden even if the burdens are not contained in the same deed.