



# Title Conditions (Scotland) Act 2003

## 2003 asp 9

### PART 10

#### MISCELLANEOUS

##### *Compulsory acquisition of land*

#### **106 Extinction of real burdens and servitudes etc. on compulsory acquisition of land**

- (1) If land is acquired compulsorily by virtue of a compulsory purchase order then, except in so far as the terms of—
  - (a) the order; or
  - (b) the conveyance in implement of such acquisition,provide otherwise, on registration of the conveyance, any real burden, or servitude, over the land shall be extinguished and any development management scheme applying as respects the land disappplied.
- (2) Without prejudice to the generality of the exception in subsection (1) above, such terms as are mentioned in that exception may provide—
  - (a) for the variation of any of the real burdens or servitudes;
  - (b) that there shall be such extinction only—
    - (i) of certain of the real burdens and servitudes;
    - (ii) in relation to certain parts of the burdened property; or
    - (iii) in respect of the enforcement rights of the owners of certain of the benefited properties.
- (3) If the compulsory purchase order provides for an exception such as is mentioned in subsection (1) above, the conveyance in implement of the acquisition shall not, unless the owners of the benefited properties consent, or as the case may be the owners' association or the holder of any personal real burden consents, be registrable if its terms do not conform in that regard.
- (4) Where a personal real burden is extinguished by virtue of subsection (1) above, such person as immediately before the extinction held the right to enforce the burden shall

be entitled to receive compensation from the acquiring authority in question for any loss thereby occasioned that person.

(5) In this section—

“compulsory purchase order” has the meaning given by section 1(1) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) (procedure for compulsory purchase of land by local authorities etc.) except that it includes a compulsory purchase order made under the Forestry Act 1967 (c. 10); and

“conveyance” means—

(a) a—

- (i) disposition;
- (ii) notice of title; or
- (iii) notarial instrument,

which includes a reference to the application of subsection (1) above;

- (b) a conveyance in the form set out in Schedule A to the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19); or
- (c) a general vesting declaration (as defined in paragraph 1(1) of Schedule 15 to the Town and Country Planning (Scotland) Act 1997 (c. 8)).

## **107 Extinction of real burdens and servitudes etc. where land acquired by agreement**

(1) If—

- (a) land acquired by a person by agreement could have been so acquired by that person compulsorily by virtue of any enactment; and
- (b) the person, having complied with subsection (4) below, registers a conveyance in implement of such acquisition together with a relevant certificate,

then, except in so far as the terms of the conveyance provide otherwise, on such registration any real burden, or servitude, over the land shall be extinguished and any development management scheme applying as respects the land disappplied.

(2) Registration under subsection (1) above shall not vary or extinguish a title condition which is the subject of an application disclosed by the certificate in so far as that title condition—

- (a) is constituted in favour of the property of which the applicant is owner; or
- (b) is a personal real burden of which the applicant is holder,

or disapply a development management scheme, described in the certificate; but the conveyance may be registered again, together with a further such certificate, under that subsection, the effect of the later registration being determined by reference to the further certificate rather than to the earlier certificate.

(3) Subsection (2) of section 106 of this Act shall apply in relation to the exception in subsection (1) above as it applies in relation to the exception in subsection (1) of that section.

(4) The person proposing to register the conveyance shall, before doing so in accordance with subsection (1)(b) above—

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

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- (a) if such registration would extinguish a title condition, give notice to the owner of the benefited property (or in the case of a personal real burden to the holder of that burden); and
  - (b) if it would disapply a development management scheme, give notice to the owners' association,of the matters mentioned in subsection (6) below.
- (5) Any person to whom notice is given under subsection (4) above may, on or before the date specified by virtue of subsection (6)(d)(ii) below, apply to the Lands Tribunal for renewal or variation of the title condition or as the case may be preservation of the development management scheme.
- (6) The matters are—
  - (a) a description of the land;
  - (b) the name and address of the person proposing to register the conveyance;
  - (c) the fact that, by virtue of this section (and subject to the terms of the conveyance), real burdens and servitudes over the land may be extinguished and any development management scheme disappplied;
  - (d) that the person given notice—
    - (i) may obtain information from the person acquiring the land about any entitlement to compensation; and
    - (ii) will require to apply to the Lands Tribunal for Scotland, by a date specified in the notice, if the title condition is to be renewed or varied under paragraph (b) of section 90(1) of this Act or as the case may be the development management scheme preserved under paragraph (e) of that section.
- (7) The date so specified may be any date which is not fewer than twenty-one days after the notice is given (intimation by affixing being taken, for the purposes of this subsection, to be given when first the notice is affixed).
- (8) Notice under subsection (4)(a) above may be given—
  - (a) by sending;
  - (b) by advertisement;
  - (c) by affixing a conspicuous notice to the burdened property and to—
    - (i) in a case where there exists one, and only one, lamp post within one hundred metres of that property, that lamp post; or
    - (ii) in a case where there exists more than one lamp post so situated, each of at least two such lamp posts; or
  - (d) by such other method as the person acquiring the land thinks fit,and notice under subsection (4)(b) above may be given by sending or by such other means as that person thinks fit.
- (9) Subsections (6) and (7) of section 21 of this Act apply in relation to affixing, and to a notice affixed, under subsection (8)(c) above as they apply in relation to affixing, and to a notice affixed, under subsection (2)(b) of that section (the reference in paragraph (a)(ii) of the said subsection (6) to the date specified in the notice as the renewal date being construed as a reference to the date specified by virtue of subsection (6)(d)(ii) above).
- (10) In this section—

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

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“conveyance” has the same meaning as in section 106(5) of this Act except that the reference, in paragraph (a) of the definition of that expression in that section, to subsection (1) of that section shall be read as a reference to that subsection of this section and paragraph (c) of that definition shall be disregarded; and

“relevant certificate” means a certificate executed, on or after the date specified by virtue of subsection (6)(d)(ii) above, by a member of the Lands Tribunal, or by their clerk, to the effect that no application in relation to the proposal to register the conveyance has been received under section 90(1)(b)(ii) or (e) of this Act or that any such application which has been received—

- (a) has been withdrawn; or
- (b) relates, in the case of an application under section 90(1)(b)(ii), (either or both)—
  - (i) to one or more but not to all of the title conditions over the land (any title condition to which it relates being described in the certificate);
  - (ii) to one or more but not to all (or probably or possibly not to all) of the benefited properties (any benefited property to which it relates being described in the certificate),

and where more than one such application has been received the certificate shall relate to both (or as the case may be to all) applications.

- (11) Any application for a relevant certificate shall be made in the form set out in schedule 12 to this Act.