



# Title Conditions (Scotland) Act 2003

## 2003 asp 9

### PART 2

#### COMMUNITY BURDENS

##### *Management of community*

#### **28 Power of majority to appoint manager etc.**

- (1) Subject to sections 54(5)(a) and 63(8)(a) of this Act and to any provision made by community burdens, the owners of a majority of the units in a community may—
  - (a) appoint a person to be the manager of the community on such terms as they may specify;
  - (b) confer on any such manager the right to exercise such of their powers as they may specify;
  - (c) revoke, or vary, the right to exercise such of the powers conferred under paragraph (b) above as they may specify; and
  - (d) dismiss any such manager.
- (2) Without prejudice to the generality of subsection (1)(b) above, the powers mentioned there include—
  - (a) power to carry out maintenance;
  - (b) power to enforce community burdens; and
  - (c) power to vary or discharge such burdens.
- (3) If a unit is owned by two or more persons in common, then, for the purposes of voting on any proposal to exercise a power conferred by subsection (1) above, the vote allocated as respects the unit shall only be counted for or against the proposal if it is the agreed vote of those of them who together own more than a half share of the unit.
- (4) The powers conferred by paragraphs (b) to (d) of subsection (1) above may be exercised whether or not the manager was appointed by virtue of paragraph (a) of that subsection.

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## 29 Power of majority to instruct common maintenance

- (1) This section applies where—
- (a) community burdens impose an obligation on the owners of all or some of the units to maintain, or contribute towards the cost of maintaining, particular property; and
  - (b) the obligation so imposed accounts for the entire liability for the maintenance of such property.
- (2) Subject to any provision made by community burdens, the owners of a majority of the units subject to the obligation may—
- (a) decide that maintenance should be carried out;
  - (b) [<sup>F1</sup>subject to subsection (3A) below, require each] owner to deposit—
    - (i) by such date as they may specify (being a date not less than twenty-eight days after the requirement is made of that owner); and
    - [<sup>F2</sup>(ii) with such person as they may nominate for the purpose,]
 a sum of money (being a sum not exceeding that owner’s apportioned share, in accordance with the terms of the community burdens, of a reasonable estimate of the cost of maintenance);
  - (c) <sup>F3</sup> .....
  - (d) instruct or carry out such maintenance; and
  - (e) modify or revoke anything done by them by virtue of paragraphs (a) to (d) above.
- (3) If a unit is owned by two or more persons in common, then, for the purposes of voting on any proposal to exercise a power conferred by subsection (2) above, the vote allocated as respects the unit shall only be counted for or against the proposal if it is the agreed vote of those of them who together own more than a half share of the unit.

[<sup>F4</sup>(3A) A requirement under subsection (2)(b) above that each owner deposit a sum of money—

- (a) exceeding £100; or
- (b) of £100 or less where the aggregate of that sum taken together with any other sum or sums required (otherwise than by a previous notice under this subsection) in the preceding 12 months to be deposited under that subsection by each owner exceeds £200,

shall be made by written notice to each owner and shall require the sum to be deposited into such account (the “maintenance account”) as the owners may nominate for the purpose.

(3B) The owners may authorise a manager or at least two other persons (whether or not owners) to operate the maintenance account on their behalf.]

- (4) Any notice given under subsection [<sup>F5</sup>(3A)] above shall contain, or to it shall be attached, a note comprising a summary of the nature and extent of the maintenance to be carried out together with the following information—
- (a) the estimated cost of carrying out that maintenance;
  - (b) why the estimate is considered a reasonable estimate;
  - (c) how—
    - (i) the sum required from the owner in question; and
    - (ii) the apportionment among the owners,

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- have been arrived at;
- (d) what the apportioned shares of the other owners are;
  - (e) the date on which the decision to carry out the maintenance was taken and the names of those by whom it was taken;
  - (f) a timetable for the carrying out of the maintenance, including the dates by which it is proposed the maintenance will be—
    - (i) commenced; and
    - (ii) completed;
  - (g) the location and number of the maintenance account; and
  - (h) the names and addresses of the persons who will be authorised to operate that account on behalf of the community.
- (5) The maintenance account shall be a bank or building society account which is interest bearing; and the authority of at least two persons, or of a manager on whom has been conferred the right to give authority, shall be required for any payment from it.
- (6) If modification or revocation under paragraph (e) of subsection (2) above affects the information contained in a notice or note under subsection (4) above, that information shall forthwith be sent again, modified accordingly, to the owners.
- [<sup>F6</sup>(6A) The notice given under subsection (2)(b) above may specify a date as a refund date for the purposes of subsection (7)(b)(i) below.]
- (7) An owner shall be entitled—
- (a) to inspect, at any reasonable time, any tender received in connection with the maintenance to be carried out;
  - (b) if—
    - (i) that maintenance is not commenced by
      - [<sup>F7</sup>(A) where the notice under subsection (2)(b) above specifies a refund date, that date; or
      - (B) where that notice does not specify such a date, the twenty-eighth] day after the date specified by virtue of subsection (4)(f)(i) above; and
    - (ii) the owner demands, by written notice, from the persons authorised under subsection [<sup>F8</sup>(3B)] above repayment (with accrued interest) of such sum as has been deposited by that owner in compliance with the requirement under subsection (2)(b) above,  
to be repayed accordingly; except that no requirement to make repayment in compliance with a notice under paragraph (b)(ii) above shall arise if the persons so authorised do not receive that notice before the maintenance is commenced.
- [<sup>F9</sup>(7A) A former owner who, before ceasing to be an owner, deposited sums in compliance with a requirement under subsection (2)(b) above, shall have the same entitlement as an owner has under subsection (7)(b) above.]
- (8) Such sums as are held in the maintenance account by virtue of subsection [<sup>F10</sup>(3A)] above are held in trust for all the depositors, for the purpose of being used by the persons authorised to make payments from the account as payment for the maintenance.

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- (9) Any sums held in the maintenance account after all sums payable in respect of the maintenance carried out have been paid shall be shared among the owners—
- (a) by repaying each depositor, with any accrued interest and after deduction of that person's apportioned share of the actual cost of the maintenance, the sum which the person deposited; or
  - (b) in such other way as the depositors agree in writing.

[<sup>F11</sup>(10) The Scottish Ministers may by order substitute for the sums for the time being specified in subsection (3A) above such other sums as appear to them to be justified by a change in the value of money appearing to them to have occurred since the last occasion on which the sums were fixed.]

#### Textual Amendments

- F1** Words in s. 29(2)(b) substituted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 8(a)(i)** (with s. 33)
- F2** S. 29(2)(b)(ii) substituted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 8(a)(i)** (with s. 33)
- F3** S. 29(2)(c) omitted (23.10.2004) by virtue of Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 8(a)(ii)** (with s. 33)
- F4** S. 29(3A)(3B) inserted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 8(b)** (with s. 33)
- F5** Words in s. 29(4) substituted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 8(c)** (with s. 33)
- F6** S. 29(6A) inserted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 8(d)** (with s. 33)
- F7** Words in s. 29(7)(b)(i) substituted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 8(e)(i)** (with s. 33)
- F8** Words in s. 29(7)(b)(ii) substituted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 8(e)(ii)** (with s. 33)
- F9** S. 29(7A) inserted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 8(f)** (with s. 33)
- F10** Words in s. 29(8) substituted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 8(g)** (with s. 33)
- F11** S. 29(10) inserted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 8(h)** (with s. 33)

### 30 Owners' decision binding

Anything done (including any decision made) by—

- (a) the owners in accordance with such provision as is made in community burdens; or
  - (b) a majority of them, in accordance with section 28 or 29 of this Act,
- is binding on all the owners and their successors as owners.

### 31 Remuneration of manager

Subject to any provision made by community burdens, liability for any remuneration due to a manager of the community (however appointed) shall be shared equally

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among the units in a community and each owner shall be liable accordingly; but if two or more persons have common ownership of a unit then—

- (a) they are severally liable for any share payable in respect of that unit; and
- (b) as between (or among) themselves, they are liable in the proportions in which they own the unit.

**[<sup>F12</sup>31A Disapplication of provisions of sections 28, 29 and 31 in certain cases**

- (1) Sections 28(1)(a) and (d) and (2)(a), 29 and 31 of this Act shall not apply in relation to a community consisting of one tenement.
- (2) Sections 28(1)(a) and (d) and 31 of this Act shall not apply to a community in any period during which the development management scheme applies to the community.]

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**Textual Amendments**

**F12** S. 31A inserted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), Sch. 4 para. 9 (with s. 33)

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