



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 10

MISCELLANEOUS

Amendments

114 Amendment of Abolition of Feudal Tenure etc. (Scotland) Act 2000

- (1) The 2000 Act shall be amended in accordance with subsections (2) to (5) below.
- (2) After section 18 there shall be inserted—

“18A Personal pre-emption burdens and personal redemption burdens

- (1) Without prejudice to section 18 of this Act, where a feudal estate of *dominium utile* of land is subject to a real burden which comprises a right of pre-emption or redemption and is enforceable by a superior of the feu or would be so enforceable were the person in question to complete title to the *dominium directum* the superior may, before the appointed day, by duly executing and registering against the *dominium utile* a notice in, or as nearly as may be in, the form contained in schedule 5A to this Act, prospectively convert that burden into a personal pre-emption burden or as the case may be into a personal redemption burden.
- (2) The notice shall—
 - (a) set out the title of the superior;
 - (b) describe, sufficiently to enable identification by reference to the Ordnance Map, the land the *dominium utile* of which is subject to the real burden (or any part of that land);
 - (c) set out the terms of the real burden; and
 - (d) set out the terms of any counter-obligation to the real burden if it is a counter-obligation enforceable against the superior.
- (3) Before submitting any notice for registration under this section, the superior shall swear or affirm as is mentioned in subsection (4) of section 18 of this Act.

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- (4) Subsection (5) of that section applies for the purposes of subsection (3) above as it applies for the purposes of subsection (4) of that section.
- (5) If subsections (1) to (3) above are, with subsection (4) of that section, complied with and immediately before the appointed day the real burden is still enforceable by the superior (or his successor) or would be so enforceable, or still so enforceable, were the person in question to complete title to the *dominium directum* then, on that day—
- (a) the real burden shall be converted into a real burden in favour of that person, to be known as a “personal pre-emption burden” or as the case may be as a “personal redemption burden”; and
 - (b) the land the *dominium utile* of which was subject to the real burden (or if part only of that land is described in pursuance of subsection (2) (b) above, that part) shall become the servient tenement.
- (6) Title to enforce the burden against the land to which the notice relates shall be subject to any such counter-obligation as was set out by virtue of subsection (2)(d) above.
- (7) The right to a personal pre-emption burden or personal redemption burden may be assigned or otherwise transferred to any person; and any such assignation or transfer shall take effect on registration.
- (8) Where the holder of a personal pre-emption burden or personal redemption burden does not have a completed title—
- (a) title may be completed by the holder registering a notice of title; or
 - (b) without completing title, the holder may grant a deed—
 - (i) assigning the right to; or
 - (ii) discharging, in whole or in part,
 the burden; but unless the deed is one to which section 15(3) of the Land Registration (Scotland) Act 1979 (c. 33) (circumstances where unnecessary to deduce title) applies, it shall be necessary, in the deed, to deduce title to the burden through the midcouples linking the holder to the person who had the last completed title.
- (9) This section is subject to sections 41 and 42 of this Act.

18B Conversion into economic development burden

- (1) Without prejudice to section 18 of this Act, where a feudal estate of *dominium utile* of land is subject to a real burden which is imposed for the purpose of promoting economic development and is enforceable by the Scottish Ministers or a local authority, being in either case the superior of the feu, or would be so enforceable were the Scottish Ministers or as the case may be the local authority to complete title to the *dominium directum*, the superior may, before the appointed day, by duly executing and registering against the *dominium utile* a notice in, or as nearly as may be in, the form contained in schedule 5B to this Act, prospectively convert that burden into an economic development burden.
- (2) The notice shall—
- (a) set out the title of the superior;

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- (b) describe, sufficiently to enable identification by reference to the Ordnance Map, the land the *dominium utile* of which is subject to the real burden (or any part of that land);
 - (c) set out the terms of the real burden;
 - (d) set out the terms of any counter-obligation to the real burden if it is a counter-obligation enforceable against the superior; and
 - (e) state that the burden was imposed for the purpose of promoting economic development and provide information in support of that statement.
- (3) If subsections (1) and (2) above are complied with and immediately before the appointed day the real burden is still enforceable by the superior or would be so enforceable were the Scottish Ministers or as the case may be the local authority to complete title to the *dominium directum* then on that day the real burden shall be converted into an economic development burden and on and after that day the Scottish Ministers or, as the case may be, the authority, shall—
- (a) have title to enforce the burden against the land to which the notice relates; and
 - (b) be presumed to have an interest to enforce it.
- (4) Title to enforce the burden against the land to which the notice relates shall be subject to any such counter-obligation as was set out by virtue of subsection (2)(d) above.
- (5) This section is subject to sections 41 and 42 of this Act.

18C Conversion into health care burden

- (1) Without prejudice to section 18 of this Act, where a feudal estate of *dominium utile* of land is subject to a real burden which is imposed for the purpose of promoting the provision of facilities for health care and is enforceable by a National Health Service trust or the Scottish Ministers, being in either case the superior of the feu, or would be so enforceable were the trust or as the case may be the Scottish Ministers to complete title to the *dominium directum*, the superior may, before the appointed day, by duly executing and registering against the *dominium utile* a notice in, or as nearly as may be in, the form contained in schedule 5C to this Act, prospectively convert that burden into a health care burden.
- (2) The notice shall—
- (a) set out the title of the superior;
 - (b) describe, sufficiently to enable identification by reference to the Ordnance Map, the land the *dominium utile* of which is subject to the real burden (or any part of that land);
 - (c) set out the terms of the real burden;
 - (d) set out the terms of any counter-obligation to the real burden if it is a counter-obligation enforceable against the superior; and
 - (e) state that the burden was imposed for the purpose of promoting the provision of facilities for health care and provide information in support of that statement.

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- (3) If subsections (1) and (2) are complied with and immediately before the appointed day the real burden is still enforceable by the superior or would be so enforceable were the trust or as the case may be the Scottish Ministers to complete title to the *dominium directum* then on that day the real burden shall be converted into a health care burden and on and after that day the trust or, as the case may be, the Scottish Ministers, shall—
- (a) have title to enforce the burden against the land to which the notice in question relates; and
 - (b) be presumed to have an interest to enforce it.
- (4) Title to enforce the burden against the land to which the notice relates shall be subject to any such counter-obligation as was set out by virtue of subsection (2)(d) above.
- (5) In subsections (1) and (2) above, “facilities for health care” includes facilities ancillary to health care; as for example (but without prejudice to that generality) accommodation for staff employed to provide health care.
- (6) This section is subject to sections 41 and 42 of this Act.”.
- (3) After section 27 there shall be inserted—

“27A Nomination of conservation body or Scottish Ministers to have title to enforce conservation burden

- (1) Where a person other than a conservation body or the Scottish Ministers has the right as superior to enforce a real burden of the class described in section 27(2) of this Act or would have that right were he to complete title to the *dominium directum*, he may, subject to subsection (2) below, before the appointed day nominate for the benefit of the public, by executing and registering against the *dominium utile* of the land subject to the burden a notice in, or as nearly as may be in, the form contained in schedule 8A to this Act, a conservation body or the Scottish Ministers to have title on or after that day to enforce the burden against that land; and, without prejudice to section 27(1) of this Act, any burden as respects which such title to enforce is by virtue of this subsection so obtained shall, on and after the appointed day, be known as a “conservation burden”.
- (2) Subsection (1) above applies only where the consent of the nominee to being so nominated is obtained—
 - (a) in a case where sending a copy of the notice, in compliance with section 41(3) of this Act, is reasonably practicable, before that copy is so sent; and
 - (b) in any other case, before the notice is executed.
- (3) The notice shall—
 - (a) state that the nominee is a conservation body (identifying it) or the Scottish Ministers, as the case may be; and
 - (b) do as mentioned in paragraphs (b) to (e) of section 27(3) of this Act.
- (4) This section is subject to sections 41 and 42 of this Act except that, in the application of subsection (1)(i) of section 42 for the purposes of this

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subsection, such discharge as is mentioned in that subsection shall be taken to require the consent of the nominated person.”.

(4) After section 28 there shall be inserted—

“28A Effect of section 27A nomination

If a notice has been executed and registered in accordance with section 27A of this Act and, immediately before the appointed day, the burden to which the notice relates is still enforceable by the nominating person as superior (or by such person as is his successor) or would be so enforceable, or still so enforceable, were the person in question to complete title to the *dominium directum* then, on and after the appointed day, the conservation body or as the case may be the Scottish Ministers shall—

- (a) subject to any counter-obligation, have title to enforce the burden against the land to which the notice in question relates; and
- (b) be presumed to have an interest to enforce that burden.”.

(5) After section 65 there shall be inserted—

“65A Sporting rights

- (1) Where a feudal estate of *dominium utile* of land is subject to sporting rights which are enforceable by a superior of the feu or which would be so enforceable were the person in question to complete title to the *dominium directum* the superior may, before the appointed day, by duly executing and registering against the *dominium utile* a notice in, or as nearly as may be in, the form contained in schedule 11A to this Act, prospectively convert those rights into a tenement in land.
- (2) The notice shall—
 - (a) set out the title of the superior;
 - (b) describe, sufficiently to enable identification by reference to the Ordnance Map, the land the *dominium utile* of which is subject to the sporting rights (or any part of that land);
 - (c) describe those rights; and
 - (d) set out the terms of any counter-obligation to those rights if it is a counter-obligation enforceable against the superior.
- (3) Before submitting any notice for registration under this section, the superior shall swear or affirm as is mentioned in subsection (4) of section 18 of this Act.
- (4) Subsection (5) of that section applies for the purposes of subsection (3) above as it applies for the purposes of subsection (4) of that section.
- (5) If subsections (1) to (3) above are, with subsection (4) of that section, complied with and immediately before the appointed day the sporting rights are still enforceable by the superior (or his successor) or would be so enforceable, or still so enforceable, were the person in question to complete title to the *dominium directum* then, on that day, the sporting rights shall be converted into a tenement in land.

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- (6) No greater, or more exclusive, sporting rights shall be enforceable by virtue of such conversion than were (or would have been) enforceable as mentioned in subsection (5) above.
 - (7) Where the *dominium utile* comprises parts each held by a separate vassal, each part shall be taken to be a separate feudal estate of *dominium utile*.
 - (8) Where sporting rights become, under subsection (5) above, a tenement in land, the right to enforce those rights shall be subject to any counter-obligation enforceable against the superior immediately before the appointed day; and section 47 of this Act shall apply in relation to any counter-obligation to sporting rights as it applies in relation to any counter-obligation to a real burden.
 - (9) In this section, “sporting rights” means a right of fishing or game.
 - (10) This section is subject to section 41 of this Act.
 - (11) Subsections (1) and (2)(a) of section 43 of this Act apply in relation to a notice submitted for registration under this section as they apply in relation to a notice so submitted under any of the provisions mentioned in those subsections; and paragraph (a) of subsection (3) of that section applies in relation to a determination for the purposes of subsection (5) of this section as it applies in relation to a determination for the purposes of any of the provisions mentioned in that paragraph.
 - (12) Subsections (1), (3) and (4) of section 46 of this Act apply in relation to sporting rights extinguished by virtue of section 54 of this Act as they apply in relation to a real burden extinguished by section 17(1)(a) of this Act.”.
- (6) Schedule 13 to this Act, which contains amendments of the 2000 Act consequential upon the provisions of this Act, shall have effect.

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