Long Leases (Scotland) Act 2012

2012 asp 9

PART 2

CONVERSION OF CERTAIN LEASEHOLD CONDITIONS TO REAL BURDENS

Personal real burdens

23 Conversion to personal pre-emption or redemption burden

(1) Without prejudice to section 14, the person entitled to enforce a qualifying condition mentioned in subsection (2) (whether as landlord or otherwise) may, before the appointed day, prospectively convert that qualifying condition into a personal pre-emption burden or (as the case may be) into a personal redemption burden by executing and registering a notice.

(2) The qualifying condition referred to in subsection (1) is a condition comprising—
- (a) a right of pre-emption, or
- (b) a right of redemption.

(3) The notice referred to in subsection (1) must—
- (a) be in the prescribed form,
- (b) set out the title to enforce the qualifying condition of the person executing and registering the notice,
- (c) identify the qualifying land (or any part of such land),
- (d) set out the terms of the qualifying condition, and
- (e) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the person executing and registering the notice.

(4) For the purposes of subsection (1)—
- (a) a notice is registered only when registered against the land identified in pursuance of subsection (3)(c), and
- (b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.

Status: *Point in time view as at 28/11/2013.*
Changes to legislation: *There are currently no known outstanding effects for the Long Leases (Scotland) Act 2012, Cross Heading: Personal real burdens. (See end of Document for details)*

(5) Before submitting any notice for registration under this section, the person entitled to enforce the qualifying condition must swear or affirm before a notary public that to the best of the knowledge and belief of that person all the information contained in the notice is true.

(6) For the purposes of subsection (5), if the person entitled to enforce the qualifying condition is—

(a) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in that subsection, then a legal representative of that person may swear or affirm, or

(b) not an individual, then any person authorised to sign documents on its behalf may swear or affirm,

and any reference in that subsection to the person entitled to enforce the qualifying condition is to be construed accordingly.

(7) If subsections (1) to (6) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the person who executed and registered the notice under subsection (1) (or that person's successor) then, on that day—

(a) the qualifying condition is 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 identified in pursuance of subsection (3)(c) becomes the burdened property.

(8) The right to a personal pre-emption burden or personal redemption burden may be assigned or otherwise transferred to any person.

(9) An assignation or transfer under subsection (8) takes effect on registration.

(10) 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 the burden, or

(ii) discharging, in whole or in part, the burden.

(11) The holder must, in a deed granted under subsection (10)(b), deduce title from the person who appears in the Register of Sasines as having the last recorded title to the burden in question unless the deed is one to which section 101 of the Land Registration etc. (Scotland) Act 2012 (asp 5) (circumstances where unnecessary to deduce title) applies.

(12) This section is subject to sections 36 and 75.

Commencement Information

I1 S. 23(3)(a) in force at 28.11.2013 for specified purposes by S.S.I. 2013/322, art. 2(m), **Sch.**

24 Conversion to economic development burden

(1) Where a local authority is, or the Scottish Ministers are, entitled to enforce a qualifying condition which is imposed for the purpose of promoting economic development, it

or they may, before the appointed day, prospectively convert that qualifying condition into an economic development burden by executing and registering a notice.

(2) The notice must—

(a) be in the prescribed form,

(b) set out the title to enforce the qualifying condition of the person executing and registering the notice,

(c) state that such person is a local authority or the Scottish Ministers,

(d) identify the qualifying land (or any part of such land),

(e) set out the terms of the qualifying condition,

(f) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the person executing and registering the notice, and

(g) state that the qualifying condition was imposed for the purpose of promoting economic development and provide information in support of that statement.

(3) For the purposes of subsection (1)—

(a) a notice is registered only when registered against the land identified in pursuance of subsection (2)(d), and

(b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.

(4) If subsections (1) to (3) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the local authority or the Scottish Ministers then, on that day, the qualifying condition becomes an economic development burden—

(a) in favour of the local authority or (as the case may be) the Scottish Ministers, and

(b) in relation to which the land identified in pursuance of subsection (2)(d) is the burdened property.

(5) This section is subject to sections 36 and 75.

Commencement Information

I2 S. 24(2)(a) in force at 28.11.2013 for specified purposes by S.S.I. 2013/322, art. 2(m), **Sch.**

25 Conversion to health care burden

(1) Where the Scottish Ministers are entitled to enforce a qualifying condition which is imposed for the purpose of promoting the provision of facilities for health care, they may, before the appointed day, prospectively convert that qualifying condition into a health care burden by executing and registering a notice.

(2) The notice must—

(a) be in the prescribed form,

(b) set out the title of the Scottish Ministers to enforce the qualifying condition,

(c) identify the qualifying land (or any part of such land),

(d) set out the terms of the qualifying condition,

(e) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the Scottish Ministers, and

(f) state that the qualifying condition was imposed for the purpose of promoting the provision of facilities for health care and provide information in support of that statement.

(3) For the purposes of subsection (1)—

(a) a notice is registered only when registered against the land identified in pursuance of subsection (2)(c), and

(b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.

(4) If subsections (1) to (3) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the Scottish Ministers then, on that day, the qualifying condition becomes a health care burden—

(a) in favour of the Scottish Ministers, and

(b) in relation to which the land identified in pursuance of subsection (2)(c) is the burdened property.

(5) This section is subject to sections 36 and 75.

Commencement Information

I3 S. 25(2)(a) in force at 28.11.2013 for specified purposes by S.S.I. 2013/322, art. 2(m), **Sch.**

26 Conversion to climate change burden

(1) Where a public body or trust is, or the Scottish Ministers are, entitled to enforce a qualifying condition which is imposed for the purpose of reducing greenhouse gas emissions, it or they may, before the appointed day, prospectively convert that qualifying condition into a climate change burden by executing and registering a notice.

(2) The notice must—

(a) be in the prescribed form,

(b) set out the title to enforce the qualifying condition of the person executing and registering the notice,

(c) state that such person is a public body, trust or the Scottish Ministers,

(d) identify the qualifying land (or any part of such land),

(e) set out the terms of the qualifying condition,

(f) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the person executing and registering the notice, and

(g) state that the qualifying condition was imposed for the purpose of reducing greenhouse gas emissions and provide information in support of that statement.

(3) For the purposes of subsection (1)—

(a) a notice is registered only when registered against the land identified in pursuance of subsection (2)(d), and

(b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.

(4) If subsections (1) to (3) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the public body, trust or the Scottish Ministers then, on that day, the qualifying condition becomes a climate change burden—

(a) in favour of the public body, the trust or (as the case may be) the Scottish Ministers, and

(b) in relation to which the land identified in pursuance of subsection (2)(d) is the burdened property.

(5) In this section—

"emissions" has the meaning given by section 17(1) of the Climate Change (Scotland) Act 2009 (asp 12),

"greenhouse gas" has the meaning given by section 10(1) of that Act,

"public body" means a body listed in Part I or II of the Schedule to the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 (SSI 2003/453).

(6) This section is subject to sections 36 and 75.

Commencement Information

I4 S. 26(2)(a) in force at 28.11.2013 for specified purposes by S.S.I. 2013/322, art. 2(m), **Sch.**

27 Conversion to conservation burden: rule one

(1) Where a conservation body is, or the Scottish Ministers are, entitled to enforce a qualifying condition of the category described in subsection (2), it or they may, before the appointed day, prospectively convert that qualifying condition into a conservation burden for the benefit of the public by executing and registering a notice.

(2) The category is those qualifying conditions which have the purpose of preserving or protecting—

(a) the architectural or historical characteristics of land, or

(b) any other special characteristics of land (including, without prejudice to the generality of this paragraph, a special characteristic derived from the flora, fauna or general appearance of the land).

(3) The notice referred to in subsection (1) must—

(a) be in the prescribed form,

(b) set out the title to enforce the qualifying condition of the person executing and registering the notice,

(c) state that such person is a conservation body or the Scottish Ministers,

(d) identify the qualifying land (or any part of such land),

(e) set out the terms of the qualifying condition, and

(f) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the person executing and registering the notice.

(4) For the purposes of subsection (1)—

(a) a notice is registered only when registered against the land identified in pursuance of subsection (3)(d), and

(b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.

(5) If subsections (1) to (4) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the conservation body or the Scottish Ministers then, on that day, the qualifying condition becomes a conservation burden—

(a) in favour of the conservation body or (as the case may be) the Scottish Ministers, and

(b) in relation to which the land identified in pursuance of subsection (3)(d) is the burdened property.

(6) The references in subsection (5) to—

(a) the conservation body include references to—

(i) any conservation body which is, or

(ii) the Scottish Ministers where they are,

its successor as the person entitled to enforce the qualifying condition, and

(b) the Scottish Ministers include references to a conservation body which is their successor as such person.

(7) This section is subject to sections 36 and 75.

Commencement Information

I5 S. 27(3)(a) in force at 28.11.2013 for specified purposes by S.S.I. 2013/322, art. 2(m), **Sch.**

28 Conversion to conservation burden: rule two

(1) The person (not being a conservation body or the Scottish Ministers) entitled to enforce a qualifying condition of the category described in section 27(2) (whether as landlord or otherwise) may before the appointed day—

(a) prospectively convert that condition into a conservation burden for the benefit of the public, and

(b) nominate a conservation body or the Scottish Ministers to have title to enforce that burden,

by executing and registering a notice.

(2) Subsection (1) 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 75(2), is reasonably practicable, before that copy is so sent, and

(b) in any other case, before the notice is executed.

(3) The notice referred to in subsection (1) must—

(a) be in the prescribed form,

(b) set out the title to enforce the qualifying condition of the person executing and registering the notice,

(c) state that the nominee is a specific conservation body or the Scottish Ministers (as the case may be), and

(d) comply with section 27(3)(d) to (f).

(4) For the purposes of subsection (1)—

(a) a notice is registered only when registered against the land identified in pursuance of subsection (3)(d), and

(b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.

(5) If subsections (1) to (4) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the person who executed and registered the notice under subsection (1) (or that person's successor) then, on that day, the qualifying condition becomes a conservation burden—

(a) in favour of the conservation body or (as the case may be) the Scottish Ministers, and

(b) in relation to which the land identified in pursuance of subsection (3)(d) is the burdened property.

(6) This section is subject to sections 36 and 75 except that, in the application of subsection (3)(b) of section 36 for the purposes of this subsection, such discharge as is mentioned in that subsection is to be taken to require the consent of the nominated person.

Commencement Information

I6 S. 28(3)(a) in force at 28.11.2013 for specified purposes by S.S.I. 2013/322, art. 2(m), **Sch.**

Status:
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Changes to legislation:
There are currently no known outstanding effects for the Long Leases (Scotland) Act 2012, Cross Heading: Personal real burdens.