
Changes to legislation: There are currently no known outstanding effects for the Tenements (Scotland) Act 2004, SCHEDULE 4. (See end of Document for details)

SCHEDULE 4

(introduced by section 25)

AMENDMENTS OF TITLE CONDITIONS (SCOTLAND) ACT 2003

- 1 The Title Conditions (Scotland) Act 2003 (asp 9) shall be amended as follows.
- 2 In section 3(8) (waiver, mitigation and variation of real burdens), for “the holder” there shall be substituted “a holder”.
- 3 In section 4 (creation of real burdens), in subsection (7), after “sections” there shall be inserted “53(3A),”.
- 4 In section 10 (affirmative burdens: continuing liability of former owner)—
- (a) in subsection (2), at the beginning there shall be inserted “Subject to subsection (2A) below,”;
 - (b) after subsection (2) there shall be inserted—
 - “(2A) A new owner shall be liable as mentioned in subsection (2) above for any relevant obligation consisting of an obligation to pay a share of costs relating to maintenance or work (other than local authority work) carried out before the acquisition date only if—
 - (a) notice of the maintenance or work—
 - (i) in, or as near as may be in, the form set out in schedule 1A to this Act; and
 - (ii) containing the information required by the notes for completion set out in that schedule,(such a notice being referred to in this section and section 10A of this Act as a “notice of potential liability for costs”) was registered in relation to the burdened property at least 14 days before the acquisition date; and
 - (b) the notice had not expired before the acquisition date.
 - (2B) In subsection (2A) above—
 - “acquisition date” means the date on which the new owner acquired right to the burdened property; and
 - “local authority work” means work carried out by a local authority by virtue of any enactment.”; and
 - (c) at the end there shall be added—
 - “(5) This section does not apply in any case where section 12 of the Tenements (Scotland) Act 2004 (asp 11) applies.”.
- 5 After section 10 there shall be inserted—

“10A Notice of potential liability for costs: further provision

- (1) A notice of potential liability for costs—
 - (a) may be registered in relation to burdened property only on the application of—
 - (i) an owner of the burdened property;
 - (ii) an owner of the benefited property; or
 - (iii) any manager; and

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- (b) shall not be registered unless it is signed by or on behalf of the applicant.
 - (2) A notice of potential liability for costs may be registered—
 - (a) in relation to more than one burdened property in respect of the same maintenance or work; and
 - (b) in relation to any one burdened property, in respect of different maintenance or work.
 - (3) A notice of potential liability for costs expires at the end of the period of 3 years beginning with the date of its registration, unless it is renewed by being registered again before the end of that period.
 - (4) This section applies to a renewed notice of potential liability for costs as it applies to any other such notice.
 - (5) The Keeper of the Registers of Scotland shall not be required to investigate or determine whether the information contained in any notice of potential liability for costs submitted for registration is accurate.
 - (6) The Scottish Ministers may by order amend schedule 1A to this Act.”
- 6 In section 11 (affirmative burdens: shared liability), after subsection (3) there shall be inserted—
- “(3A) For the purposes of subsection (3) above, the floor area of a flat is calculated by measuring the total floor area (including the area occupied by any internal wall or other internal dividing structure) within its boundaries; but no account shall be taken of any pertinents or any of the following parts of a flat—
- (a) a balcony; and
 - (b) except where it is used for any purpose other than storage, a loft or basement.”.
- 7 In section 25 (definition of the expression “community burdens”), in subsection (1) (a), for “four” there shall be substituted “two”.
- 8 In section 29 (power of majority to instruct common maintenance)—
- (a) in subsection (2)—
 - (i) in paragraph (b)—
 - (A) for the words from the beginning to “that” where it first occurs there shall be substituted “subject to subsection (3A) below, require each”; and
 - (B) for sub-paragraph (ii) there shall be substituted—
 - “(ii) with such person as they may nominate for the purpose,”; and
 - (ii) paragraph (c) shall be omitted;
 - (b) after subsection (3) there shall be inserted—
 - “(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

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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.”;

(c) in subsection (4), for “(2)(b)” there shall be substituted “ (3A) ”;

(d) after subsection (6) there shall be inserted—

“(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.”;

(e) in subsection (7)(b)—

(i) in sub-paragraph (i), for “the fourteenth” there shall be substituted “—

(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”;

(ii) in sub-paragraph (ii), for “(4)(h)” there shall be substituted “ (3B) ”;

(f) after subsection (7) there shall be inserted—

“(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.”;

(g) in subsection (8), for “(2)(b)” there shall be substituted “ (3A) ”; and

(h) after subsection (9) there shall be inserted—

“(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.”.

9 After section 31 there shall be inserted—

“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.”.

10 In section 33 (majority etc. variation and discharge of community burdens)—

(a) in subsection (1)(b), the words “where no such provision is made,” shall be omitted; and

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- (b) in subsection (2)(a), at the beginning there shall be inserted “ where no such provision as is mentioned in subsection (1)(a) above is made, ”.
- 11 In section 35 (variation and discharge of community burdens by owners of adjacent units), in subsection (1), the words “in a case where no such provision as is mentioned in section 33(1)(a) of this Act is made” shall be omitted.
- 12 In section 43 (rural housing burdens)—
- (a) in subsection (1), after “burden” where it first occurs there shall be inserted “ over rural land ”; and
- (b) in subsection (6), for “on rural land or to provide rural” there shall be substituted “ or ”.
- 13 In section 45 (economic development burdens), subsection (6) shall be omitted.
- 14 In section 53 (common schemes: related properties), after subsection (3) there shall be inserted—
- “(3A) Section 4 of this Act shall apply in relation to any real burden to which subsection (1) above applies as if—
- (a) in subsection (2), paragraph (c)(ii);
- (b) subsection (4); and
- (c) in subsection (5), the words from “and” to the end, were omitted.”
- 15 In section 90 (powers of Lands Tribunals as respects title conditions), in subsection (8A), for “application” there shall be substituted “ disapplication ”.
- 16 In section 98 (granting certain applications for variation, discharge, renewal or preservation of title conditions), in paragraph (b)(i), for the words “the owners of all” there shall be substituted “ all the owners (taken as a group) of ”.
- 17 In section 99 (granting applications as respects development management schemes), in subsection (4)(a), for the words “the owners” there shall be substituted “ all the owners (taken as a group) ”.
- 18 In section 119 (savings and transitional provision etc.), subsection (9) shall be omitted.
- 19 In section 122(1) (interpretation)—
- (a) the definition of “flat” shall be omitted;
- (b) after the definition of “Lands Tribunal” there shall be inserted—
- ““local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);”;
- and
- (c) for the definition of “tenement” there shall be substituted—
- ““tenement” has the meaning given by section 26 of the Tenements (Scotland) Act 2004 (asp 11); and references to a flat in a tenement shall be construed accordingly;”.
- 20 After schedule 1 there shall be inserted—

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“SCHEDULE 1A
(introduced by section 10(2A))

FORM OF NOTICE OF POTENTIAL LIABILITY FOR COSTS

“NOTICE OF POTENTIAL LIABILITY FOR COSTS

This notice gives details of certain maintenance or work carried out in relation the property specified in the notice. The effect of the notice is that a person may, on becoming the owner of the property, be liable by virtue of section 10(2A) of the Title Conditions (Scotland) Act 2003 (asp 9) for any outstanding costs relating to the maintenance or work.

Property to which the notice relates:

(see note 1 below)

Description of the maintenance or work to which notice relates:

(see note 2 below)

Person giving notice:

(see note 3 below)

Signature:

(see note 4 below)

Date of signing:”

Notes for completion

(These notes are not part of the notice)

- 1 Describe the property in a way that is sufficient to identify it. Where the property has a postal address, the description must include that address. Where title to the property has been registered in the Land Register of Scotland, the description must refer to the title number of the property or of the larger subjects of which it forms part. Otherwise, the description should normally refer to and identify a deed recorded in a specified division of the Register of Sasines.
- 2 Describe the maintenance or work in general terms.
- 3 Give the name and address of the person applying for registration of the notice (“the applicant”) or the applicant’s name and the name and address of the applicant’s agent.
- 4 The notice must be signed by or on behalf of the applicant.”

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