

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Miscellaneous

Section 107: Extinction of real burdens and servitudes etc. where land acquired by agreement

416. *Section 107* applies to cases of acquisition by agreement in circumstances where compulsory powers could have been used.
417. The effect of registration of a conveyance under section 107 is, unless the conveyance provides otherwise, to extinguish all burdens and servitudes and to disapply any development management scheme.
418. *Section 107(4)* imposes a notification requirement upon a person acquiring land under section 107 (“the acquiring authority”).
419. A benefited proprietor, the holder of a personal real burden or, in the case of a development management scheme, the owners association is entitled to make an application for renewal to the Lands Tribunal within 21 days of the notice. The notice will in terms of subsection (6) have to state the name of the acquiring authority, describe the land being acquired, the effect of the conveyance in extinguishing real burdens imposed on that land or in disapplying the development management scheme (and any modification of that effect) and that the benefited proprietor, holder or owners association, can take the matter to the Lands Tribunal within 21 days.
420. The notice given by the acquiring authority triggers a 21 day period in which the benefited proprietor, holder or owners association, could apply to the Lands Tribunal for renewal of the burden or preservation of the development management scheme.
421. The registration of the conveyance alone would not have the effect of extinguishing the burdens or of disapplying the development management scheme. For the conveyance to have this effect it would also be necessary to register a certificate from the Tribunal. The certificate would be received following an application made by the acquiring authority to the Tribunal.
422. The certificate would state, as with sections 23 and 24, that no objection had been timeously received or that all such objections had been withdrawn or, in the case of real burdens and servitudes (i.e. an application made under section 90(1)(b)(ii)) that objections only related to certain burdens or were only made by certain benefited proprietors.
423. It would be possible to register a conveyance notwithstanding that no certificate has been obtained from the Tribunal. The lack of a certificate would not prevent registration of the conveyance but only the extinguishment of the real burdens by the conveyance. It is not necessary to give notice before registering a conveyance without a relevant certificate. Subsection (4) only applies where registration is in accordance with section 107(1)(b), i.e. is registration of a conveyance with a certificate.

*These notes relate to the Title Conditions (Scotland) Act
2003 (asp 9) which received Royal Assent on 3 April 2003*

424. Burdens would be extinguished, as with sections 23 and 24, only in accordance with the terms of the certificate obtained from the Tribunal.
425. The certificate is a separate document obtained from the Lands Tribunal upon application. There is a prescribed form of application for a certificate in schedule 12.
426. To extinguish real burdens and servitude under section 107(1) the conveyance must be registered along with a relevant certificate (annexed to the conveyance). If the conveyance had already been registered then it would be possible to re-register the conveyance with a certificate and as with section 24(2) it would be possible to re-register the conveyance again with a further certificate. The burdens are extinguished from the date on which the conveyance with the annexed certificate is registered.