

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Community Burdens

Section 29: Power of majority to instruct common maintenance

139. *Section 29* applies where there is no provision in the title deeds of a particular community for decision making on common maintenance. It provides a default mechanism to allow the owners of a majority of units to arrange for maintenance to be carried out and paid for. In order for this to be fully effective, the section provides that a majority would be able to require each owner to deposit a contribution in advance of that person's estimated share of the cost. 'Maintenance' is defined in section 122(1) and includes repairs. However, the section does not apply to improvements unless they are reasonably incidental to the maintenance. 'Unit' is also defined in section 122(1).
140. As *subsection (1)(a)* makes clear, section 29 is concerned with **common** maintenance, that is to say, with maintenance obligations imposed by community burdens on more than one unit. Paragraph (a) makes clear that there must be a community burden providing for common maintenance in the title deeds for section 29 to operate. The section is only concerned with majority *enforcement* of these burdens: it is not *creating* new maintenance obligations where none existed previously. Paragraph (b) of subsection (1) requires the cost of carrying out the works to be fully apportioned by the community burdens.
141. *Subsection (2)* sets out a list of powers. These are exercisable, not by a majority of units in the community, but by a majority of the units *subject to the particular maintenance obligation* (which may not be the same thing). The powers allow the majority to require each owner to deposit a contribution in advance based on an estimate of that person's share of the cost. Paragraph (b) allows the money to be collected in advance of the repair. Paragraph (e) allows owners to change their minds. The powers are default provisions and the community burdens may provide for different mechanisms to apply.
142. *Subsection (3)* makes provision for voting in a case where a unit is owned in common. The most frequent example of this is where husband and wife own the property together, but it is possible for other arrangements to occur and for ownership to be split unequally e.g. on a 75%/25% basis. Subsection (3) means that the owner or owners of more than a one half share of a unit would be able to exercise the vote in respect of their property for the purposes of subsection (2).
143. Subsection (2) requires a notice to be sent to each owner detailing the sum of money to be deposited. *Subsection (4)* provides that when this happens owners must be given certain additional details in order to provide them with information regarding the nature of the works, the cost, and timescale for the works, and the apportionment of the cost and how and where the monies collected will be held.
144. *Subsection (5)* provides that the monies must be held in an interest bearing bank or building society account. The money is to be held by the account holders in trust for

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

owners who have deposited money (subsection (8)). The account holders do not have to be owners of units within the community: the account holder could be, for example, a solicitor acting as agent or a manager. The account should only be operable by those authorised by the majority to do so in terms of paragraph (c) of subsection (2).

145. *Subsection (6)* requires the owners to be notified of any modification or revocation that affects the information given under subsection (4).
146. *Subsection (7)* makes provision for exhibition of tenders received for the works and for a refund if the work has not commenced within a certain period. If, however, the works have commenced before the demand for a refund is received, then there is no obligation to repay the monies even if work commenced after the date stated in the timetable.
147. *Subsection (8)* makes provision for the refunding of any monies left over after the work has been completed. In the absence of alternative written agreement, each owner should receive the amount contributed by him or her plus accrued interest less his or her share of the cost of the works.