



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 1

REAL BURDENS: GENERAL

Duration, enforceability and liability

7 Duration

Subject to any enactment (including this Act) or to any rule of law, the duration of a real burden is perpetual unless the constitutive deed provides for a duration of a specific period.

Commencement Information

- II** [S. 7](#) wholly in force; [s. 7](#) in force for certain purposes at 4.4.2003 see [s. 129\(2\)\(5\)](#); [s. 7](#) otherwise in force at 28.11.2004 by [S.S.I. 2003/456](#), [art. 2](#)

8 Right to enforce

- (1) A real burden is enforceable by any person who has both title and interest to enforce it.
- (2) A person has such title if an owner of the benefited property; but the following persons also have such title—
 - (a) a person who has a real right of lease or proper liferent in the benefited property (or has a pro indiviso share in such right);
 - (b) a person who—
 - (i) is the non-entitled spouse [^{F1}or non entitled partner] of an owner of the benefited property or of a person mentioned in paragraph (a) above; and
 - (ii) has occupancy rights in that property; and
 - (c) if the real burden was created as mentioned in subsection (3)(b) below, a person who was, at the time the cost in question was incurred—
 - (i) an owner of the benefited property; or

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(ii) a person having such title by virtue of paragraph (a) or (b) above.

(3) A person has such interest if—

- (a) in the circumstances of any case, failure to comply with the real burden is resulting in, or will result in, material detriment to the value or enjoyment of the person's ownership of, or right in, the benefited property; or
- (b) the real burden being an affirmative burden created as an obligation to defray, or contribute towards, some cost, that person seeks (and has grounds to seek) payment of, or as respects, that cost.

(4) A person has title to enforce a real burden consisting of—

- (a) a right of pre-emption, redemption or reversion; or
 - (b) any other type of option to acquire the burdened property,
- only if the owner of the benefited property.

[^{F2}(5) In subsection (2)(b) above—

“non-entitled partner” shall be construed in accordance with section 101(1) of the Civil Partnership Act 2004 (c. 33) (right of civil partner without title to occupy family home);

“non-entitled spouse” shall be construed in accordance with section 1 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59) (right of spouse without title to occupy matrimonial home); and

“occupancy rights” shall be construed, in relation to non-entitled partners, in accordance with section 135 of the 2004 Act and, in relation to non-entitled spouses, in accordance with section 1 of the 1981 Act.]

(6) Subsections (2) to (5) above do not apply in relation to a personal real burden.

Textual Amendments

- F1** Words in s. 8(2)(b)(i) inserted (30.6.2006) by [The Civil Partnership Act 2004 \(Consequential Amendments\) \(Scotland\) Order 2006 \(S.S.I. 2006/379\)](#), **art. 3(a)**
- F2** S. 8(5) substituted (30.6.2006) by [The Civil Partnership Act 2004 \(Consequential Amendments\) \(Scotland\) Order 2006 \(S.S.I. 2006/379\)](#), **art. 3(b)**

Commencement Information

- I2** S. 8 wholly in force; s. 8 in force for certain purposes at 4.4.2003, see s. 129(2)(5); s. 8 otherwise in force at 28.11.2004 by [S.S.I. 2003/456](#), **art. 2**

9 Persons against whom burdens are enforceable

- (1) An affirmative burden is enforceable against the owner of the burdened property.
- (2) A negative burden or an ancillary burden is enforceable against—
 - (a) the owner, or tenant, of the burdened property; or
 - (b) any other person having the use of that property.

Commencement Information

- I3** S. 9 wholly in force; s. 9 in force for certain purposes at 4.4.2003, see s. 129(2)(5); s. 9 otherwise in force at 28.11.2004 by [S.S.I. 2003/456](#), **art. 2**

Changes to legislation: There are currently no known outstanding effects for the Title Conditions (Scotland) Act 2003, Cross Heading: Duration, enforceability and liability. (See end of Document for details)

10 Affirmative burdens: continuing liability of former owner

- (1) An owner of burdened property shall not, by virtue only of ceasing to be such an owner, cease to be liable for the performance of any relevant obligation.
- (2) [^{F3}Subject to subsection (2A) below,] a person who becomes an owner of burdened property (any such person being referred to in this section as a “new owner”) shall be severally liable with any former owner of the property for any relevant obligation for which the former owner is liable.
- [^{F4}(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.]
- (3) A new owner who incurs expenditure in the performance of any relevant obligation for which a former owner of the property is liable may recover an amount equal to such expenditure from that former owner.
- (4) For the purposes of subsections (1) to (3) above, “relevant obligation” means any obligation under an affirmative burden which is due for performance; and such an obligation becomes due—
 - (a) in a case where—
 - (i) the burden is a community burden; and
 - (ii) a binding decision to incur expenditure is made,
on the date on which that decision is made; or
 - (b) in any other case, on—
 - (i) such date; or
 - (ii) the occurrence of such event,
as may be stipulated for its performance (whether in the constitutive deed or otherwise).
- [^{F5}(5) This section does not apply in any case where section 12 of the Tenements (Scotland) Act 2004 (asp 11) applies.]

Changes to legislation: There are currently no known outstanding effects for the Title Conditions (Scotland) Act 2003, Cross Heading: Duration, enforceability and liability. (See end of Document for details)

Textual Amendments

- F3** Words in s. 10(2) inserted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 4(a)** (with s. 33)
- F4** S. 10(2A)(2B) inserted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 4(b)** (with s. 33)
- F5** S. 10(5) added (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 4(c)** (with s. 33)

Modifications etc. (not altering text)

- C1** Ss. 2, 3, 5, 10, 11, 13, 14, 16, 18, 59 to 61, 67, 70 and 105 applied (1.6.2009) by The Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 (S.I. 2009/729), **art. 5(1)(3)(4)**

Commencement Information

- I4** S. 10 wholly in force; s. 10 in force for certain purposes at 4.4.2003 see s. 129(2)(5); s. 10 otherwise in force at 28.11.2004 by S.S.I. 2003/456, **art. 2**

[^{F6}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
 - (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.

[The owner of a burdened property may apply to register a notice (a “notice of ^{F7}(3A) discharge”) if—

- (a) a notice of potential liability for costs in relation to the property has not expired,
 - (b) the liability for costs under section 10(2) to which the notice of potential liability relates has, in relation to the property which is the subject of the application, been fully discharged, and
 - (c) the person who registered the notice of potential liability for costs consents to the application.
- (3B) A notice of discharge—
- (a) must be in the form prescribed by order made by the Scottish Ministers, and
 - (b) on being registered, discharges the notice of potential liability for costs as it applies to the property which is the subject of the application.]

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- (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.]

Textual Amendments

- F6** S. 10A inserted (23.10.2004) by [Tenements \(Scotland\) Act 2004 \(asp 11\)](#), ss. 25, 34(3), [Sch. 4 para. 5](#) (with s. 33)
- F7** [S. 10A\(3A\)\(3B\)](#) inserted (13.11.2014 for specified purposes, 16.12.2014 in so far as not already in force) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), ss. [86\(1\)](#), 104(3); S.S.I. 2014/264, art. 2, sch.

11 Affirmative burdens: shared liability

- (1) If a burdened property as respects which an affirmative burden is created is divided (whether before or after the appointed day) into two or more parts then, subject to subsections (2) and (4) below, the owners of the parts—
 - (a) are severally liable in respect of the burden; and
 - (b) as between (or among) themselves, are liable in the proportions which the areas of their respective parts bear to the area of the burdened property.
- (2) “Part” in subsection (1) above does not include a part to which the affirmative burden cannot relate.
- (3) In the application of subsection (1) above to parts which are flats in a tenement, the reference in paragraph (b) of that subsection to the areas of the respective parts shall be construed as a reference to the floor areas of the respective flats.
[^{F8}(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.]
- (4) Paragraph (a) of subsection (1) above shall not apply if, in the constitutive deed, it is provided that liability as between (or among) the owners of the parts shall be otherwise than is provided for in that paragraph; and paragraph (b) of that subsection shall not apply if, in the constitutive deed or in the conveyance effecting the division, it is provided that liability as between (or among) them shall be otherwise than is provided for in that paragraph.
- (5) If two or more persons own in common a burdened property as respects which an affirmative burden is created then, unless the constitutive deed otherwise provides—
 - (a) they are severally liable in respect of the burden; and
 - (b) as between (or among) themselves, they are liable in the proportions in which they own the property.

Changes to legislation: There are currently no known outstanding effects for the Title Conditions (Scotland) Act 2003, Cross Heading: Duration, enforceability and liability. (See end of Document for details)

Textual Amendments

- F8** S. 11(3A) inserted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 6** (with s. 33)

Modifications etc. (not altering text)

- C2** Ss. 2, 3, 5, 10, 11, 13, 14, 16, 18, 59 to 61, 67, 70 and 105 applied (1.6.2009) by The Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 (S.I. 2009/729), **art. 5(1)(3)(4)**

Commencement Information

- I5** S. 11 wholly in force; s. 11 in force for certain purposes at 4.4.2003 see s. 129(2)(5); s. 11 otherwise in force at 28.11.2004 by S.S.I. 2003/456, **art. 2**

Changes to legislation:

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