



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 10

MISCELLANEOUS

VALID FROM 28/11/2004

Consequential alterations to Land Register

105 Alterations to Land Register consequential upon registering certain deeds

- (1) Subject to subsection (2) below, in registering in the Register of Sasines a document mentioned in subsection (3) below the Keeper of the Registers of Scotland may make such consequential alterations to the Land Register of Scotland as the Keeper considers requisite.
- (2) In so registering such a document, or in registering it in the Land Register, by virtue of section 18, 19 or 20 of the 2000 Act or section 4(5), 50, 75 or 80 of this Act, the Keeper shall make such consequential alterations as are mentioned in subsection (1) above.
- (3) The documents are—
 - (a) any decree, deed or other document which varies, discharges, renews, reallots, preserves or imposes a real burden or servitude; and
 - (b) any deed which comprises a conveyance of part of—
 - (i) the benefited property; or
 - (ii) the burdened property.

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\(1\)\(3\)\(4\)](#)

Status: Point in time view as at 04/04/2003. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Title Conditions (Scotland) Act 2003, Part 10. (See end of Document for details)

VALID FROM 01/11/2003

Compulsory acquisition of land

106 Extinction of real burdens and servitudes etc. on compulsory acquisition of land

- (1) If land is acquired compulsorily by virtue of a compulsory purchase order then, except in so far as the terms of—
- (a) the order; or
 - (b) the conveyance in implement of such acquisition,
- provide otherwise, on registration of the conveyance, any real burden, or servitude, over the land shall be extinguished and any development management scheme applying as respects the land disappplied.
- (2) Without prejudice to the generality of the exception in subsection (1) above, such terms as are mentioned in that exception may provide—
- (a) for the variation of any of the real burdens or servitudes;
 - (b) that there shall be such extinction only—
 - (i) of certain of the real burdens and servitudes;
 - (ii) in relation to certain parts of the burdened property; or
 - (iii) in respect of the enforcement rights of the owners of certain of the benefited properties.
- (3) If the compulsory purchase order provides for an exception such as is mentioned in subsection (1) above, the conveyance in implement of the acquisition shall not, unless the owners of the benefited properties consent, or as the case may be the owners' association or the holder of any personal real burden consents, be registrable if its terms do not conform in that regard.
- (4) Where a personal real burden is extinguished by virtue of subsection (1) above, such person as immediately before the extinction held the right to enforce the burden shall be entitled to receive compensation from the acquiring authority in question for any loss thereby occasioned that person.
- (5) In this section—
- “compulsory purchase order” has the meaning given by section 1(1) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) (procedure for compulsory purchase of land by local authorities etc.) except that it includes a compulsory purchase order made under the Forestry Act 1967 (c. 10); and
- “conveyance” means—
- (a) a—
 - (i) disposition;
 - (ii) notice of title; or
 - (iii) notarial instrument,

which includes a reference to the application of subsection (1) above;
 - (b) a conveyance in the form set out in Schedule A to the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19); or

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- (c) a general vesting declaration (as defined in paragraph 1(1) of Schedule 15 to the Town and Country Planning (Scotland) Act 1997 (c. 8)).

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

(1) If—

- (a) land acquired by a person by agreement could have been so acquired by that person compulsorily by virtue of any enactment; and
- (b) the person, having complied with subsection (4) below, registers a conveyance in implement of such acquisition together with a relevant certificate,

then, except in so far as the terms of the conveyance provide otherwise, on such registration any real burden, or servitude, over the land shall be extinguished and any development management scheme applying as respects the land disappplied.

(2) Registration under subsection (1) above shall not vary or extinguish a title condition which is the subject of an application disclosed by the certificate in so far as that title condition—

- (a) is constituted in favour of the property of which the applicant is owner; or
- (b) is a personal real burden of which the applicant is holder,

or disapply a development management scheme, described in the certificate; but the conveyance may be registered again, together with a further such certificate, under that subsection, the effect of the later registration being determined by reference to the further certificate rather than to the earlier certificate.

(3) Subsection (2) of section 106 of this Act shall apply in relation to the exception in subsection (1) above as it applies in relation to the exception in subsection (1) of that section.

(4) The person proposing to register the conveyance shall, before doing so in accordance with subsection (1)(b) above—

- (a) if such registration would extinguish a title condition, give notice to the owner of the benefited property (or in the case of a personal real burden to the holder of that burden); and
- (b) if it would disapply a development management scheme, give notice to the owners' association,

of the matters mentioned in subsection (6) below.

(5) Any person to whom notice is given under subsection (4) above may, on or before the date specified by virtue of subsection (6)(d)(ii) below, apply to the Lands Tribunal for renewal or variation of the title condition or as the case may be preservation of the development management scheme.

(6) The matters are—

- (a) a description of the land;
- (b) the name and address of the person proposing to register the conveyance;
- (c) the fact that, by virtue of this section (and subject to the terms of the conveyance), real burdens and servitudes over the land may be extinguished and any development management scheme disappplied;
- (d) that the person given notice—

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- (i) may obtain information from the person acquiring the land about any entitlement to compensation; and
 - (ii) will require to apply to the Lands Tribunal for Scotland, by a date specified in the notice, if the title condition is to be renewed or varied under paragraph (b) of section 90(1) of this Act or as the case may be the development management scheme preserved under paragraph (e) of that section.
- (7) The date so specified may be any date which is not fewer than twenty-one days after the notice is given (intimation by affixing being taken, for the purposes of this subsection, to be given when first the notice is affixed).
- (8) Notice under subsection (4)(a) above may be given—
- (a) by sending;
 - (b) by advertisement;
 - (c) by affixing a conspicuous notice to the burdened property and to—
 - (i) in a case where there exists one, and only one, lamp post within one hundred metres of that property, that lamp post; or
 - (ii) in a case where there exists more than one lamp post so situated, each of at least two such lamp posts; or
 - (d) by such other method as the person acquiring the land thinks fit,
- and notice under subsection (4)(b) above may be given by sending or by such other means as that person thinks fit.
- (9) Subsections (6) and (7) of section 21 of this Act apply in relation to affixing, and to a notice affixed, under subsection (8)(c) above as they apply in relation to affixing, and to a notice affixed, under subsection (2)(b) of that section (the reference in paragraph (a)(ii) of the said subsection (6) to the date specified in the notice as the renewal date being construed as a reference to the date specified by virtue of subsection (6)(d)(ii) above).
- (10) In this section—
- “conveyance” has the same meaning as in section 106(5) of this Act except that the reference, in paragraph (a) of the definition of that expression in that section, to subsection (1) of that section shall be read as a reference to that subsection of this section and paragraph (c) of that definition shall be disregarded; and
- “relevant certificate” means a certificate executed, on or after the date specified by virtue of subsection (6)(d)(ii) above, by a member of the Lands Tribunal, or by their clerk, to the effect that no application in relation to the proposal to register the conveyance has been received under section 90(1)(b)(ii) or (e) of this Act or that any such application which has been received—
- (a) has been withdrawn; or
 - (b) relates, in the case of an application under section 90(1)(b)(ii), (either or both)—
 - (i) to one or more but not to all of the title conditions over the land (any title condition to which it relates being described in the certificate);
 - (ii) to one or more but not to all (or probably or possibly not to all) of the benefited properties (any benefited property to which it relates being described in the certificate),

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and where more than one such application has been received the certificate shall relate to both (or as the case may be to all) applications.

- (11) Any application for a relevant certificate shall be made in the form set out in schedule 12 to this Act.

Amendments

VALID FROM 28/11/2004

108 Amendment of Church of Scotland (Property and Endowments) (Amendment) Act 1933

In section 9 of the Church of Scotland (Property and Endowments) (Amendment) Act 1933 (c. 44) (right of pre-emption of certain successors in title to persons who granted or disposed without valuable consideration for the erection of a church or manse), after subsection (3) there is added—

- “(4) Where part of the lands which adjoin as is mentioned in subsection (3) above are conveyed, then on registration of the conveyance that subsection shall cease to afford a right of pre-emption to any owner of the part conveyed unless in the conveyance it is provided that the subsection shall instead cease to afford such a right to any owner of the part retained (in which case the subsection shall apply accordingly).
- (5) The Scottish Ministers may by order made by statutory instrument make provision as to the procedures to be followed for the purposes of subsection (3) above.
- (6) Without prejudice to the generality of subsection (5) above, any such order may include provision—
- (a) as to how a price is to be fixed; and
 - (b) for any case where there is at any time, as regards the ground or part, more than one person to whom an opportunity to purchase must be afforded under subsection (3) above.”.

109 Amendment of Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947

- (1) The First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) shall be amended in accordance with the following subsections.
- (2) In paragraph 3(b) (which requires a local authority to notify certain persons that a compulsory purchase order is about to be submitted by the authority for confirmation etc.), the existing words from “every owner” to “order”, where it first occurs, shall be head (i); and after that head there shall be inserted the following heads—
- “(ii) the holder of any personal real burden affecting that land if registration of the conveyance in implement of the order would vary or extinguish the title condition in question;
 - (iii) the owner of any land which is a benefited property (as defined by section 122(1) of the Title Conditions (Scotland)

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Act 2003 (asp 9)) in relation to any land comprised in the order if such registration would vary or extinguish the title condition in question; and

- (iv) the owners' association of the development in question if a development management scheme applies as respects any land comprised in the order and registration of the conveyance in implement of the order would disapply that scheme.”.

(3) After paragraph 3 there shall be inserted—

“3A

Service of notice under head (ii) or (iii) of paragraph 3(b) above shall be—

- (a) by sending (that expression being construed in accordance with section 124 of the said Act of 2003 and as if what was being done was being done under that Act);
 - (b) by advertisement;
 - (c) by affixing a conspicuous notice to the burdened property and to—
 - (i) in a case where there exists one, and only one, lamp post which is situated within one hundred metres of that property, that lamp post; or
 - (ii) in a case where there exists more than one lamp post so situated, each of at least two such lamp posts; or
 - (d) by such other means as the acquiring authority think fit,
- and service of notice under head (iv) of that paragraph shall be by sending (as so construed) or by such other means as the acquiring authority think fit.

3B

Subsections (6) and (7) of section 21 of the said Act of 2003 apply in relation to affixing, and to a notice affixed, under paragraph 3A(c) above as they apply in relation to affixing, and to a notice affixed, under subsection (2)(b) of that section (the reference in paragraph (a)(ii) of the said subsection (6) to the date specified in the notice as the renewal date being construed as a reference to the last day of the period specified in the notice given under paragraph 3(b) above).”.

(4) In paragraph 4 (powers in relation to objectors)—

- (a) in sub-paragraph (2), at the beginning there shall be inserted “ Subject to sub-paragraph (2A), ”;
- (b) after sub-paragraph (2) there shall be inserted—

“(2A) If the person by whom an objection is made states that he objects as mentioned in sub-paragraph (4)(b) or (c) below, sub-paragraph (2) above shall not apply as respects that objection provided that the acquiring authority give the person a written undertaking that any conveyance in implement of the acquisition will provide that the title condition in question is not varied or extinguished in respect of the enforcement rights of that person or as the case may be that the development management scheme is not disappplied; and any such undertaking shall—

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- (a) identify the benefited property (if any) and burdened property or as the case may be the development to which the development management scheme applies;
- (b) identify the order; and
- (c) set out the manner in which the conveyance will fulfil the undertaking.

(2B) The effect, under subsection (1) of section 106 of the Title Conditions (Scotland) Act 2003 (asp 9) (extinction of real burdens and servitudes etc. on compulsory acquisition of land), of registering the conveyance after an undertaking given under sub-paragraph (2A) above has been registered against the burdened property, or as the case may be against the units of the development, shall be subject to the terms of the undertaking irrespective of the terms of the conveyance.

(2C) In sub-paragraphs (2A) and (2B) above, “conveyance” has the same meaning as in subsection (5) of that section.”;

- (c) in sub-paragraph (4), the existing words from “the grounds thereof” to the end shall be head (a) and after that head there shall be inserted the following heads—

“(b) whether he objects as a person with title to enforce a title condition and, if he does so object, then in that statement to—

- (i) identify the benefited property (if any) and burdened property;
- (ii) identify the title condition (either by setting it out in full or by identifying the constitutive deed, saying where it is registered and giving the date of registration); and
- (iii) if there is a benefited property, describe his connection with it;

(c) whether he objects as owners' association of the development to which a development management scheme applies and, if he does so object, then in that statement to identify—

- (i) the development; and
- (ii) the development management scheme (by identifying the deed of application, saying where it is registered and giving the date of registration).”.

(5) After paragraph 6 there is inserted—

“6A
In this Part, “title condition”, “development management scheme” and “personal real burden” have the same meanings as in the Title Conditions (Scotland) Act 2003 (asp 9).”.

110 Amendment of Forestry Act 1967

(1) Schedule 5 to the Forestry Act 1967 (c. 10) shall be amended in accordance with the following subsections.

(2) In paragraph 2 (which provides for notices as respects compulsory purchase orders), after sub-paragraph (1) there shall be inserted—

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“(1A) Before making a compulsory purchase order the Scottish Ministers shall give notice of their intention in that regard to—

- (a) the holder of any personal real burden affecting the land to which the order relates if registration of the conveyance in implement of the order would vary or extinguish the title condition in question;
- (b) the owner of any land which is a benefited property (as defined by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9)) in relation to any land comprised in the order if such registration would vary or extinguish the title condition in question; and
- (c) the owners' association of the development in question if a development management scheme applies as respects any land comprised in the order and registration of the conveyance in implement of the order would disapply that scheme.

(1B) Notice under sub-paragraph (1A)(a) or (b) above may be given—

- (a) by sending (that expression being construed in accordance with section 124 of the said Act of 2003 and as if what was being done was being done under that Act);
- (b) by advertisement;
- (c) by affixing a conspicuous notice to the burdened property and to—
 - (i) in a case where there exists one, and only one, lamp post which is situated within one hundred metres of that property, that lamp post; or
 - (ii) in a case where there exists more than one lamp post so situated, each of at least two such lamp posts; or
- (d) by such other means as the Scottish Ministers think fit,

and service of notice under sub-paragraph (1A)(c) above shall be by sending (as so construed) or by such other means as the Scottish Ministers think fit.

(1C) Subsections (6) and (7) of section 21 of the said Act of 2003 apply in relation to affixing, and to a notice affixed, under sub-paragraph (1B)(c) above as they apply in relation to affixing, and to a notice affixed, under subsection (2)(b) of that section (the reference in paragraph (a)(ii) of the said subsection (6) to the date specified in the notice as the renewal date being construed as a reference to the last day of the period specified in the notice given under paragraph 2(1)(b) above).”.

(3) In each of paragraphs 3(2) and 6, at the beginning, there shall be inserted the words “ Subject to paragraph 6B below, ”; and in paragraph 4, for the words “paragraph 5” there shall be substituted the words “ paragraphs 5 and 6B ”.

(4) After paragraph 6 there shall be inserted—

“6A

The Scottish Ministers may require an objector to state in writing whether he objects—

- (a) as a person with title to enforce a title condition and if he does so object then in that statement to—
 - (i) identify the benefited property and burdened property;

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- (ii) identify the title condition (either by setting it out in full or by identifying the constitutive deed, saying where it is registered and giving the date of registration); and
 - (iii) describe his connection with the benefited property.
- (b) as owners' association and if he does so object then in that statement to identify—
- (i) the development; and
 - (ii) the development management scheme (by identifying the deed of application, saying where it is registered and giving the date of registration).

6B

If in compliance with paragraph 6A above an objector states that he objects as mentioned in sub-paragraph (a) or (b) of that paragraph, paragraphs 3(2), 4 and 6 above shall not apply as respects that objection provided that the Scottish Ministers give him a written undertaking that any conveyance in implement of the acquisition will provide—

- (a) where the objector is as mentioned in paragraph 6A(a) above, that the title condition in question is not varied or extinguished in respect of the enforcement rights of that person, any such undertaking—
- (i) identifying the benefited property (if any) and burdened property;
 - (ii) identifying the order; and
 - (iii) setting out the manner in which the conveyance will fulfil the undertaking; or
- (b) where the objector is as mentioned in paragraph 6A(b) above, that the development management scheme will not be disapplied, any such undertaking—
- (i) identifying the development;
 - (ii) identifying the order; and
 - (iii) setting out the manner in which the conveyance will fulfil the undertaking.

6C

The effect, under subsection (1) of section 106 of the Title Conditions (Scotland) Act 2003 (asp 9) (extinction of real burdens and servitudes etc. on compulsory acquisition of land), of registering the conveyance after an undertaking given under paragraph 6B above has been registered against the burdened property, or as the case may be against the units of the development, shall be subject to the terms of the undertaking irrespective of the terms of the conveyance.

6D

In this Part, “title condition”, “development management scheme” and “personal real burden” have the same meanings as in that Act; and in paragraphs 6B and 6C above, “conveyance” has the same meaning as in section 106(5) of that Act.”.

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111 Amendment of Conveyancing and Feudal Reform (Scotland) Act 1970

- (1) In section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) (ranking of standard securities), in subsection (1), for the words from “his present advances” to “to which the security relates” there shall be substituted the following paragraphs—
- “(a) the present debt incurred (whenever payable); and
 - (b) any future debt which, under the contract to which the security relates, he is required to allow the debtor in the security to incur.”
- (2) Subsection (1) above does not affect the preference in ranking of the standard security of a creditor if the notice mentioned in the said section 13 was received by that creditor before the day on which this section comes into force.

VALID FROM 28/11/2004

112 Amendment of Land Registration (Scotland) Act 1979

- (1) The 1979 Act shall be amended in accordance with the following subsections.
- (2) In section 6(1) (duty to make up and maintain title sheet), for paragraph (e) there shall be substituted—
- “(e) any subsisting real right pertaining to the interest or subsisting real burden or condition affecting the interest and, where the interest is so affected by virtue of section 18, 18A, 18B, 18C, 19, 20, 27 or 27A of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5) or section 4(5), 50, 75 or 80 of the Title Conditions (Scotland) Act 2003 (asp 9), the Keeper shall in the entry identify the benefited property, or as the case may be the dominant tenement, (if any) and any person in whose favour the real burden is constituted;
 - (ee) any subsisting right to a title condition pertaining to the interest by virtue of section 18, 19 or 20 of that Act of 2000 or 4(5), 50, 75 or 80 of that Act of 2003, the Keeper identifying in the entry the burdened property;”.
- (3) In section 9 (rectification of Land Register of Scotland), in subsection (3B), the existing words “any provision of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5) other than section 4 or 65” shall be paragraph (a); and after that paragraph there shall be inserted the word “; or” and the following paragraph—
- “(b) section 49, 50, 58 or 80 of the Title Conditions (Scotland) Act 2003 (asp 9);”.

113 Amendment of Enterprise and New Towns (Scotland) Act 1990

- (1) The Enterprise and New Towns (Scotland) Act 1990 (c. 35) shall be amended in accordance with the following subsections.
- (2) In section 8(6) (powers and duties of Scottish Enterprise or Highlands and Islands Enterprise exercisable on terms and conditions arranged by agreement with person having an interest in land), for the words “section 32(3)” there shall be substituted “section 32”.

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(3) In section 32 (registration of agreements), for subsection (1) there shall be substituted—

“(1) Scottish Enterprise or Highlands and Islands Enterprise, in exercising the powers and duties conferred on it by this Act, may as respects land which does not belong to it enter into an agreement with any person who has an interest in the land (provided that it is an interest which enables the person to bind the land) for the purpose of restricting or regulating, either permanently or during such period as may be prescribed by the agreement, the development or use of the land; and the agreement may be registered either—

- (a) in a case where the land affected by the agreement is registered in the Land Register of Scotland, in that register; or
- (b) in any other case, in the appropriate Division of the General Register of Sasines.

(1A) An agreement under subsection (1) above may contain such incidental and consequential provisions (including financial ones) as appear to the body in question to be necessary or expedient for the purposes of the agreement.”.

114 Amendment of Abolition of Feudal Tenure etc. (Scotland) Act 2000

(1) The 2000 Act shall be amended in accordance with subsections (2) to (5) below.

(2) After section 18 there shall be inserted—

“18A Personal pre-emption burdens and personal redemption burdens

(1) Without prejudice to section 18 of this Act, where a feudal estate of *dominium utile* of land is subject to a real burden which comprises a right of pre-emption or redemption and is enforceable by a superior of the feu or would be so enforceable were the person in question to complete title to the *dominium directum* the superior may, before the appointed day, by duly executing and registering against the *dominium utile* a notice in, or as nearly as may be in, the form contained in schedule 5A to this Act, prospectively convert that burden into a personal pre-emption burden or as the case may be into a personal redemption burden.

(2) The notice shall—

- (a) set out the title of the superior;
- (b) describe, sufficiently to enable identification by reference to the Ordnance Map, the land the *dominium utile* of which is subject to the real burden (or any part of that land);
- (c) set out the terms of the real burden; and
- (d) set out the terms of any counter-obligation to the real burden if it is a counter-obligation enforceable against the superior.

(3) Before submitting any notice for registration under this section, the superior shall swear or affirm as is mentioned in subsection (4) of section 18 of this Act.

(4) Subsection (5) of that section applies for the purposes of subsection (3) above as it applies for the purposes of subsection (4) of that section.

(5) If subsections (1) to (3) above are, with subsection (4) of that section, complied with and immediately before the appointed day the real burden is

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still enforceable by the superior (or his successor) or would be so enforceable, or still so enforceable, were the person in question to complete title to the *dominium directum* then, on that day—

- (a) the real burden shall be 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 the *dominium utile* of which was subject to the real burden (or if part only of that land is described in pursuance of subsection (2) (b) above, that part) shall become the servient tenement.
- (6) Title to enforce the burden against the land to which the notice relates shall be subject to any such counter-obligation as was set out by virtue of subsection (2)(d) above.
- (7) The right to a personal pre-emption burden or personal redemption burden may be assigned or otherwise transferred to any person; and any such assignation or transfer shall take effect on registration.
- (8) 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; or
 - (ii) discharging, in whole or in part,
 the burden; but unless the deed is one to which section 15(3) of the Land Registration (Scotland) Act 1979 (c. 33) (circumstances where unnecessary to deduce title) applies, it shall be necessary, in the deed, to deduce title to the burden through the midcouples linking the holder to the person who had the last completed title.
- (9) This section is subject to sections 41 and 42 of this Act.

18B Conversion into economic development burden

- (1) Without prejudice to section 18 of this Act, where a feudal estate of *dominium utile* of land is subject to a real burden which is imposed for the purpose of promoting economic development and is enforceable by the Scottish Ministers or a local authority, being in either case the superior of the feu, or would be so enforceable were the Scottish Ministers or as the case may be the local authority to complete title to the *dominium directum*, the superior may, before the appointed day, by duly executing and registering against the *dominium utile* a notice in, or as nearly as may be in, the form contained in schedule 5B to this Act, prospectively convert that burden into an economic development burden.
- (2) The notice shall—
- (a) set out the title of the superior;
 - (b) describe, sufficiently to enable identification by reference to the Ordnance Map, the land the *dominium utile* of which is subject to the real burden (or any part of that land);
 - (c) set out the terms of the real burden;

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- (d) set out the terms of any counter-obligation to the real burden if it is a counter-obligation enforceable against the superior; and
 - (e) state that the burden was imposed for the purpose of promoting economic development and provide information in support of that statement.
- (3) If subsections (1) and (2) above are complied with and immediately before the appointed day the real burden is still enforceable by the superior or would be so enforceable were the Scottish Ministers or as the case may be the local authority to complete title to the *dominium directum* then on that day the real burden shall be converted into an economic development burden and on and after that day the Scottish Ministers or, as the case may be, the authority, shall—
- (a) have title to enforce the burden against the land to which the notice relates; and
 - (b) be presumed to have an interest to enforce it.
- (4) Title to enforce the burden against the land to which the notice relates shall be subject to any such counter-obligation as was set out by virtue of subsection (2)(d) above.
- (5) This section is subject to sections 41 and 42 of this Act.

18C Conversion into health care burden

- (1) Without prejudice to section 18 of this Act, where a feudal estate of *dominium utile* of land is subject to a real burden which is imposed for the purpose of promoting the provision of facilities for health care and is enforceable by a National Health Service trust or the Scottish Ministers, being in either case the superior of the feu, or would be so enforceable were the trust or as the case may be the Scottish Ministers to complete title to the *dominium directum*, the superior may, before the appointed day, by duly executing and registering against the *dominium utile* a notice in, or as nearly as may be in, the form contained in schedule 5C to this Act, prospectively convert that burden into a health care burden.
- (2) The notice shall—
- (a) set out the title of the superior;
 - (b) describe, sufficiently to enable identification by reference to the Ordnance Map, the land the *dominium utile* of which is subject to the real burden (or any part of that land);
 - (c) set out the terms of the real burden;
 - (d) set out the terms of any counter-obligation to the real burden if it is a counter-obligation enforceable against the superior; and
 - (e) state that the burden was imposed for the purpose of promoting the provision of facilities for health care and provide information in support of that statement.
- (3) If subsections (1) and (2) are complied with and immediately before the appointed day the real burden is still enforceable by the superior or would be so enforceable were the trust or as the case may be the Scottish Ministers to complete title to the *dominium directum* then on that day the real burden shall

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be converted into a health care burden and on and after that day the trust or, as the case may be, the Scottish Ministers, shall—

- (a) have title to enforce the burden against the land to which the notice in question relates; and
 - (b) be presumed to have an interest to enforce it.
- (4) Title to enforce the burden against the land to which the notice relates shall be subject to any such counter-obligation as was set out by virtue of subsection (2)(d) above.
- (5) In subsections (1) and (2) above, “facilities for health care” includes facilities ancillary to health care; as for example (but without prejudice to that generality) accommodation for staff employed to provide health care.
- (6) This section is subject to sections 41 and 42 of this Act.”.
- (3) After section 27 there shall be inserted—

“27A Nomination of conservation body or Scottish Ministers to have title to enforce conservation burden

- (1) Where a person other than a conservation body or the Scottish Ministers has the right as superior to enforce a real burden of the class described in section 27(2) of this Act or would have that right were he to complete title to the *dominium directum*, he may, subject to subsection (2) below, before the appointed day nominate for the benefit of the public, by executing and registering against the *dominium utile* of the land subject to the burden a notice in, or as nearly as may be in, the form contained in schedule 8A to this Act, a conservation body or the Scottish Ministers to have title on or after that day to enforce the burden against that land; and, without prejudice to section 27(1) of this Act, any burden as respects which such title to enforce is by virtue of this subsection so obtained shall, on and after the appointed day, be known as a “conservation burden”.
 - (2) Subsection (1) above 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 41(3) of this Act, is reasonably practicable, before that copy is so sent; and
 - (b) in any other case, before the notice is executed.
 - (3) The notice shall—
 - (a) state that the nominee is a conservation body (identifying it) or the Scottish Ministers, as the case may be; and
 - (b) do as mentioned in paragraphs (b) to (e) of section 27(3) of this Act.
 - (4) This section is subject to sections 41 and 42 of this Act except that, in the application of subsection (1)(i) of section 42 for the purposes of this subsection, such discharge as is mentioned in that subsection shall be taken to require the consent of the nominated person.”.
- (4) After section 28 there shall be inserted—

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“28A Effect of section 27A nomination

If a notice has been executed and registered in accordance with section 27A of this Act and, immediately before the appointed day, the burden to which the notice relates is still enforceable by the nominating person as superior (or by such person as is his successor) or would be so enforceable, or still so enforceable, were the person in question to complete title to the *dominium directum* then, on and after the appointed day, the conservation body or as the case may be the Scottish Ministers shall—

- (a) subject to any counter-obligation, have title to enforce the burden against the land to which the notice in question relates; and
- (b) be presumed to have an interest to enforce that burden.”.

(5) After section 65 there shall be inserted—

“65A Sporting rights

- (1) Where a feudal estate of *dominium utile* of land is subject to sporting rights which are enforceable by a superior of the feu or which would be so enforceable were the person in question to complete title to the *dominium directum* the superior may, before the appointed day, by duly executing and registering against the *dominium utile* a notice in, or as nearly as may be in, the form contained in schedule 11A to this Act, prospectively convert those rights into a tenement in land.
- (2) The notice shall—
 - (a) set out the title of the superior;
 - (b) describe, sufficiently to enable identification by reference to the Ordnance Map, the land the *dominium utile* of which is subject to the sporting rights (or any part of that land);
 - (c) describe those rights; and
 - (d) set out the terms of any counter-obligation to those rights if it is a counter-obligation enforceable against the superior.
- (3) Before submitting any notice for registration under this section, the superior shall swear or affirm as is mentioned in subsection (4) of section 18 of this Act.
- (4) Subsection (5) of that section applies for the purposes of subsection (3) above as it applies for the purposes of subsection (4) of that section.
- (5) If subsections (1) to (3) above are, with subsection (4) of that section, complied with and immediately before the appointed day the sporting rights are still enforceable by the superior (or his successor) or would be so enforceable, or still so enforceable, were the person in question to complete title to the *dominium directum* then, on that day, the sporting rights shall be converted into a tenement in land.
- (6) No greater, or more exclusive, sporting rights shall be enforceable by virtue of such conversion than were (or would have been) enforceable as mentioned in subsection (5) above.
- (7) Where the *dominium utile* comprises parts each held by a separate vassal, each part shall be taken to be a separate feudal estate of *dominium utile*.

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- (8) Where sporting rights become, under subsection (5) above, a tenement in land, the right to enforce those rights shall be subject to any counter-obligation enforceable against the superior immediately before the appointed day; and section 47 of this Act shall apply in relation to any counter-obligation to sporting rights as it applies in relation to any counter-obligation to a real burden.
- (9) In this section, “sporting rights” means a right of fishing or game.
- (10) This section is subject to section 41 of this Act.
- (11) Subsections (1) and (2)(a) of section 43 of this Act apply in relation to a notice submitted for registration under this section as they apply in relation to a notice so submitted under any of the provisions mentioned in those subsections; and paragraph (a) of subsection (3) of that section applies in relation to a determination for the purposes of subsection (5) of this section as it applies in relation to a determination for the purposes of any of the provisions mentioned in that paragraph.
- (12) Subsections (1), (3) and (4) of section 46 of this Act apply in relation to sporting rights extinguished by virtue of section 54 of this Act as they apply in relation to a real burden extinguished by section 17(1)(a) of this Act.”.
- (6) Schedule 13 to this Act, which contains amendments of the 2000 Act consequential upon the provisions of this Act, shall have effect.

Miscellaneous

VALID FROM 28/11/2004

115 Further provision as respects notices of preservation or of converted servitude

- (1) This section applies in relation to a notice of preservation or of converted servitude.
- (2) Except where it is not reasonably practicable to do so, the owner of the benefited property shall, before executing the notice, send to the owner of the burdened property a copy of—
- (a) the notice;
 - (b) the explanatory note set out in whichever schedule to this Act relates to the notice; and
 - (c) in the case of a notice of converted servitude, the constitutive deed (if any).
- (3) The owner of the benefited property shall, in the notice, state either—
- (a) that a copy of the notice has been sent in accordance with subsection (2) above; or
 - (b) that it was not reasonably practicable for such a notice to be so sent.
- (4) However many the benefited or burdened properties may be, if the terms of the real burdens or converted servitudes are set out in a single constitutive deed, execution and registration may be accomplished in a single notice.

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- (5) The Keeper of the Registers of Scotland shall not be required to determine whether a person submitting a notice for registration has complied with subsection (2) above.
- (6) Where—
- (a) a notice submitted before the expiry of the period of ten years which commences immediately after the appointed day is rejected by the Keeper; but
 - (b) a court or the Lands Tribunal then determines that the notice is registrable, the notice may, if not registered before that expiry, be registered—
 - (i) within two months after the determination is made; but
 - (ii) before such date after that expiry as the Scottish Ministers may by order prescribe;and any notice registered under this subsection shall be treated as if it had been registered before that expiry.
- (7) For the purposes of subsection (6) above, the application to the court, or to the Lands Tribunal, which has resulted in the determination shall require to have been made within such period as the Scottish Ministers may by order prescribe.
- (8) In subsection (6)(b) above, “court” means Court of Session or sheriff.

VALID FROM 28/11/2004

116 Benefited property outwith Scotland

As respects a real burden or servitude, the benefited property need not be in Scotland; but where it is not then nothing in this Act requires registration against that property.

117 Pecuniary real burdens

On and after the day on which this section comes into force, it shall not be competent to create a pecuniary real burden (that is to say, to constitute a heritable security by reservation in a conveyance).

118 Common interest

On and after the day on which this section comes into force—

- (a) it shall not be competent to create a right of common interest; and
- (b) no such right shall arise otherwise than by implication of law.

Status:

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Changes to legislation:

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