



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 5

REAL BURDENS: MISCELLANEOUS

59 Effect of extinction etc. on court proceedings

Where by virtue of this Act, a real burden is to any extent discharged, extinguished or made unenforceable, then on and after the day on which that happens (but only to the extent in question)—

- (a) no proceedings for enforcement shall be commenced;
- (b) any such proceedings already commenced shall, in so far as they do not relate to the payment of money, be deemed to have been abandoned on that day and may, without further process and without any requirement that full judicial expenses shall have been paid by the pursuer, be dismissed accordingly; and
- (c) any decree or interlocutor already pronounced in proceedings for such enforcement shall, in so far as it does not relate to the payment of money, be deemed to have been reduced, or as the case may be recalled, on that day.

60 Grant of deed where title not completed: requirements

- (1) Subject to subsection (2) below, where an owner who does not have a completed title to land is to grant, as respects a real burden—

- (a) a constitutive deed;
- (b) a deed of discharge; or
- (c) a deed of variation,

then unless the deed is one to which section 15(3) of the 1979 Act (circumstances where unnecessary to deduce title) applies, it shall be necessary in the deed to deduce title to the land through the midcouples linking the owner to the person who had the last completed title to the land.

- (2) Where, under section 33 of this Act, a manager is to grant a deed of variation or discharge, it shall not be necessary to comply with subsection (1) above or with section 15(3) of the 1979 Act.

61 Contractual liability incidental to creation of real burden

Incidental contractual liability which a constitutive deed (or a deed into which a constitutive deed is incorporated) gives rise to as respects a prospective real burden, ends when the deed has been duly registered and the real burden has become effective.

62 Real burdens of combined type

- (1) Where an obligation is constituted both as a nameable type of real burden (such as, for example, a community burden) and as a real burden which is not of that nameable type, then in so far as a provision of this Act relates specifically to real burdens of the nameable type the obligation shall be taken, for the purpose of determining the effect of that provision, to be constituted as two distinct real burdens.
- (2) The owner of a benefited property which is a unit of a community shall not be entitled to enforce that obligation against the community constituted other than as a community burden or as a burden mentioned in section 1(3) of this Act.

63 Manager burdens

- (1) A real burden (whenever created) may make provision conferring on such person as may be specified in the burden power to—
 - (a) act as the manager of related properties;
 - (b) appoint some other person to be such manager; and
 - (c) dismiss any person appointed by virtue of paragraph (b) above,a real burden making any such provision being referred to in this Act as a “manager burden”.
- (2) A power conferred by a manager burden is exercisable only if the person on whom the power is conferred is the owner of one of the related properties.
- (3) The right to a manager burden may be assigned or otherwise transferred; and any such assignation or transfer shall take effect on the sending of written intimation to the owners of the related properties.
- (4) A manager burden shall be extinguished on the earliest of the following dates—
 - (a) the date on which such period as may be specified in the burden expires;
 - (b) the relevant date;
 - (c) the ninetieth day of any continuous period throughout which, by virtue of subsection (2) above, the burden is not exercisable; and
 - (d) if a manager is dismissed under section 64 of this Act (in the case mentioned in subsection (6) below), the date of dismissal.
- (5) In this section, the “relevant date”—
 - (a) in the case so mentioned means the date thirty years after the day specified in subsection (7) below;
 - (b) in a case where the manager burden is imposed under a common scheme on any unit of a sheltered or retirement housing development, means the date three years after the day so specified; and
 - (c) in any other case, means the date five years after the day so specified.

- (6) The case is where the manager burden is imposed on the sale, by virtue of section 61 of the Housing (Scotland) Act 1987 (c. 26) (secure tenant's right to purchase), of a property by—
 - (a) a person such as is mentioned in any of the sub-paragraphs of subsection (2) (a) of that section; or
 - (b) a predecessor of any such person,
to a tenant of such a person.
- (7) The day is that on which the constitutive deed setting out the terms of the burden is registered (and if there is more than one day on which such a constitutive deed is registered in respect of the related properties, then the first such day).
- (8) Where a power conferred by a manager burden is exercisable, any person who is, by virtue of that burden, a manager may not be dismissed—
 - (a) under section 28(1)(d) of this Act; or
 - (b) in a case other than that mentioned in subsection (6) above, under section 64 of this Act.
- (9) Section 17(1) of the 2000 Act (extinction on appointed day of certain rights of superior) shall not apply to manager burdens.

64 Overriding power to dismiss and appoint manager

- (1) Where a person is the manager of related properties, the owners of two thirds of those properties may—
 - (a) dismiss that person; and
 - (b) where they do so, appoint some other person to be such manager,
and such actings shall be effective notwithstanding the terms of any real burden affecting those properties; but this section is subject to section 63(8)(b) of this Act.
- (2) If a property is owned by two or more persons in common, then, for the purposes of voting on any proposal to exercise a power conferred by subsection (1) above, the vote allocated as respects the property shall only be counted for or against the proposal if it is the agreed vote of those of them who together own more than a half share of the property.

65 Manager: transitory provisions

Where, immediately before the appointed day, any person is, by virtue of any real burden or purported real burden, ostensibly the manager of related properties that person shall be deemed to have been validly appointed as such.

66 The expression “related properties”

- (1) Whether properties are related properties for the purposes of sections 63 to 65 of this Act is, subject to subsection (2) below, to be inferred from all the circumstances; and without prejudice to the generality of this section circumstances giving rise to such an inference might include—
 - (a) the convenience of managing the properties together because they share—
 - (i) some common feature; or
 - (ii) an obligation for common maintenance of some facility;

- (b) it being evident that the properties constitute a group of properties on which real burdens are imposed under a common scheme; or
 - (c) there being shared ownership of common property.
- (2) For the purposes of section 63(2) of this Act, the following are not related properties—
- (a) any property which, being a unit in a sheltered or retirement housing development, is used in some special way (that is to say, is the unit mentioned as an exception in section 54(1) of this Act);
 - (b) any property to which a development management scheme applies; or
 - (c) any facility which benefits two or more properties (examples of such a facility being, without prejudice to the generality of this paragraph, a private road and a common area for recreation).

67 Discharge of rights of irritancy

- (1) All rights of irritancy in respect of a breach of a real burden are, on the day on which this section comes into force, discharged; and on and after that day—
- (a) it shall not be competent to create any such right; and
 - (b) any proceedings already commenced to enforce any such right shall be deemed abandoned and may, without further process and without any requirement that full judicial expenses shall have been paid by the pursuer, be dismissed accordingly.
- (2) Subsection (1)(b) above shall not affect any cause in which final decree (that is to say, any decree or interlocutor which disposes of the cause and is not subject to appeal or review) is granted before the coming into force of this section.

68 Requirement for repetition etc. of terms of real burden in future deed

In any deed (whenever executed) a requirement to the effect that the terms of a real burden shall be repeated or referred to in any subsequent deed shall be of no effect.

69 Further provision as respects deeds of variation and of discharge

- (1) Where a deed of variation or deed of discharge is granted under this Act, it is not requisite that there be a grantee.
- (2) Any such deed so granted may be registered by an owner of the burdened property or by any other person against whom the real burden is enforceable.
- (3) Without prejudice to subsection (2) above, a deed of variation or deed of discharge granted under section 33 or 35 of this Act may be registered by a granter.

70 Duty to disclose identity of owner

A person who has title to enforce a real burden (the “entitled person”) may require any person who, at any time, was an owner of the burdened property (the “second person”) to disclose to the entitled person—

- (a) the name and address of the owner, for the time being, of such property; or
- (b) (if the second person cannot do that) such other information as the second person has which might enable the entitled person to discover that name and address.