



# Title Conditions (Scotland) Act 2003

## 2003 asp 9

### PART 8

#### PRE-EMPTION AND REVERSION

##### *Pre-emption*

#### **82 Application and interpretation of sections 83 and 84**

Sections 83 and 84 of this Act apply to any subsisting right of pre-emption constituted as a title condition which—

- (a) was originally created in favour of a feudal superior; or
- (b) was created in a deed executed after 1st September 1974,

and for the purposes of sections 83(1)(a) and 84(1)(b) of this Act the person last registered as having title to a personal pre-emption burden or rural housing burden shall be taken to be the holder for a right of pre-emption which that burden comprises.

#### **83 Extinction following pre-sale undertaking**

(1) Where, in relation to any burdened property (or, as the case may be, part of such property)—

- (a) the holder of a right of pre-emption to which this section applies gives an undertaking (in the form, or as nearly as may be in the form, contained in schedule 10 to this Act) that, subject to such conditions (if any) as the holder may specify in the undertaking, the holder will not exercise that right during such period as may be so specified;
- (b) a conveyance in implement of the sale of the burdened property (or part) is registered before the end of that period; and
- (c) any conditions specified under paragraph (a) above have been satisfied,

such right shall, on registration of such a conveyance, be extinguished unless the right is constituted as a rural housing burden in which case the title condition shall be taken to have been complied with as respects that sale only.

(2) Any undertaking given under subsection (1) above—

- (a) is binding on the holder of the right of pre-emption; and

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- (b) if registered is binding on any successor as holder provided that the undertaking was registered before the successor completed title.

#### **84 Extinction following offer to sell**

- (1) If in relation to a right of pre-emption to which this section applies—
  - (a) an event specified in the constitutive deed as an event on the occurrence of which such right may be exercised occurs; and
  - (b) the owner of the burdened property makes, in accordance with subsections (2) to (6) below, an offer to sell that property (or, as the case may be, part of that property) to the holder of such right,

then such right shall, in relation to that property (or part), be extinguished unless it is constituted as a rural housing burden in which case the title condition shall be taken to have been complied with as respects that event only.
- (2) An offer shall be in writing and shall comply with section 2 of the Requirements of Writing (Scotland) Act 1995 (c. 7) (requirements for formal validity of certain documents).
- (3) An offer shall be open for acceptance during whichever is the shorter of—
  - (a) the period of 21 days, or where the right is constituted as a rural housing burden 42 days, beginning with the day on which the offer is sent;
  - (b) such number of days beginning with that day as may be specified in the constitutive deed.
- (4) An offer shall be made on such terms as may be set out, or provided for, in the constitutive deed; but in so far as no such terms are set out, an offer shall be made on such terms (including any terms so provided for) as are reasonable in the circumstances.
- (5) Where—
  - (a) an offer is sent in accordance with this section; and
  - (b) the holder of the right does not, within the time allowed by virtue of subsection (3) above for acceptance of the offer, inform (in writing, whether or not transmitted by electronic means) the owner of the burdened property that the holder considers, giving reasons for so considering, that the terms on which the offer is made are unreasonable,

the terms of the offer shall, for the purposes of subsection (4) above, be deemed to be reasonable.
- (6) If the holder of a right cannot by reasonable inquiry be identified or found, an offer may be sent to the Extractor of the Court of Session; and for the purposes of this section an offer so sent shall be deemed to have been sent to the holder.

#### **85 Ending of council's right of pre-emption as respects certain churches**

In a scheme framed under subsection (1) of section 22 of the Church of Scotland (Property and Endowments) Act 1925 (c. 33) (schemes for the ownership, maintenance and administration of churches etc.), any provision made in accordance with subsection (2)(h) of that section (council's right of pre-emption) shall cease to have effect.

## Reversion

### 86 Reversions under School Sites Act 1841

- (1) In a case where—
  - (a) land would, under the third proviso to section 2 of the [School Sites Act 1841 \(4 & 5 Vict. c.38\)](#) (the “1841 Act”) revert (but for this section) to any person or has so reverted; but
  - (b) the person has not, before the day on which this section comes into force, completed title to the land, subsections (2) to (9) below shall (to the extent that subsection (9) admits) apply in place of that proviso and be deemed always to have applied and nothing shall be void or challengeable by virtue of that proviso.
- (2) If the circumstances are that a contract of sale of the land has been concluded by, or on behalf of, the education authority, the authority shall pay to the person, where the cessation of use by virtue of which the land would (but for this section) revert, or has reverted, occurred—
  - (a) before the day on which this section comes into force, an amount equal to the open market value of the land as at that day;
  - (b) on or after that day, an amount equal to the open market value of the land as at the date of cessation less any improvement value as at that date.
- (3) If the circumstances are other than is mentioned in subsection (2) above—
  - (a) the person may specify an obligation mentioned in paragraph (a), or as the case may be (b), of subsection (4) below and require the authority to comply therewith, which subject to paragraph (b) below the authority shall do;
  - (b) the authority may, if the person requires under paragraph (a) above performance of the obligation mentioned in paragraph (a)(i), or as the case may be (b)(i), of that subsection, instead elect to make payment to the person of such amount as is mentioned in paragraph (a)(ii), or as the case may be (b) (ii), of that subsection provided that such election is timeous.
- (4) The obligations are, where the cessation of use by virtue of which the ownership of the land would (but for this section) revert, or has reverted, occurred—
  - (a) before the day on which this section comes into force—
    - (i) to convey the land to the person;
    - (ii) to make a payment to the person of an amount equal to the open market value of the land as at that day; or
  - (b) on or after that day—
    - (i) on payment by the person of any improvement value as at the date of cessation, to convey the land to the person;
    - (ii) to make a payment to the person of an amount equal to the open market value of the land as at the date of cessation less any improvement value as at that date.
- (5) Any dispute arising in relation to the assessment of the value for the purposes of this section of any land, buildings or structures may be referred to, and determined by, the Lands Tribunal.
- (6) For the purposes of this section—

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“education authority” has the meaning given by section 135(1) of the Education (Scotland) Act 1980 (c. 44) except that if title to the land has been transferred to any person by any enactment it means that person; and

“improvement value” means such part of the value of the land as is attributable to any building (or other structure) on the land other than any such building (or other structure) erected by or at the expense of—

(a) the person who made the gift, sale or exchange of the land under section 2 of the 1841 Act; or

(b) any predecessor, as owner of such land, of that person.

(7) References in subsection (1) above to the third proviso to section 2 of the 1841 Act shall be construed as including references to that proviso as applied by virtue of any other enactment; and for the purposes of that construction, the reference in paragraph (a) of the definition of “improvement value” in subsection (6) above to the said section 2 shall be construed as a reference to the provision corresponding to that section in such other enactment.

(8) The reference in subsection (3)(b) above to an election being timeous is to its being notified to the person within three months after the requirement in question is made.

(9) Subsections (2) to (8) above do not apply where the person has, before the day on which this section comes into force, accepted an offer of compensation in respect of the land or concluded a contract for, or accepted, a conveyance of the land.

(10) Subsections (1)(b) and (2) of section 67 of this Act shall apply in relation to any proceedings already commenced by virtue of the proviso mentioned in subsection (1) (a) above as they apply in relation to any proceedings already commenced as mentioned in the said subsection (1)(b).

## **87 Right to petition under section 7 of Entail Sites Act 1840**

(1) In a case where—

(a) it would be competent but for this section, section 50(1) of the 2000 Act (disentailment on appointed day) and the repeal of the Entail Sites Act 1840 by that Act for a person to apply by petition under section 7 of that Act of 1840 (petition praying to have feu charter or other right or lease declared to be forfeited etc.); but

(b) the person has not, before the day on which this section comes into force, accepted an offer of compensation in respect of the right so to apply,

subsections (2) to (6) and (8) of section 86 of this Act shall, in place of the said section 7 but with the modifications specified in subsection (2) below, apply.

(2) The modifications are that—

(a) for any reference to the education authority there shall be substituted a reference to the parties in whose favour the feu charter or lease was granted, or the successors other than by purchase for value of those parties;

(b) in each of subsections (2) and (4), for the word “revert” there shall be substituted “be forfeit” and for the word “reverted” there shall be substituted “have been forfeit”; and

(c) in subsection (6), for paragraph (a) of the definition of “improvement value” there shall be substituted—

“(a) the person who granted the feu or lease under section 1 of the [Entail Sites Act 1840 \(3 & 4 Vict. c.48\)](#) (grants for sites of churches etc.);”.

- (3) After such obligations as arise by virtue of this section are met or prescribe, the purposes for which the land in question was feued or leased under the said Act of 1840 need no longer be given effect.
- (4) Subsections (1)(b) and (2) of section 67 of this Act shall apply in relation to any application already made by petition as mentioned in subsection (1)(a) above as they apply in relation to any proceedings already commenced as mentioned in the said subsection (1)(b).

## **88 Prescriptive period for obligations arising by virtue of 1841 Act or 1840 Act**

In Schedule 1 to the Prescription and Limitation (Scotland) Act [1973 \(c. 52\)](#) (obligations affected by prescriptive periods of five years to which section 6 of that Act applies)—

(a) after sub-paragraph (aa) of paragraph 1 there shall be inserted—

“(ab) to any obligation arising by virtue of a right—

- (i) of reversion under the third proviso to section 2 of the [School Sites Act 1841 \(4 & 5 Vict. c.38\)](#) (or of reversion under that proviso as applied by virtue of any other enactment);
- (ii) to petition for a declaration of forfeiture under section 7 of the [Entail Sites Act 1840 \(3 & 4 Vict. c.48\)](#);”;

(b) in paragraph 2—

(i) in sub-paragraph (e), for the words “or (aa)” there shall be substituted “, (aa) or (ab)”;

(ii) after that sub-paragraph there shall be inserted—

“(ee) so as to extinguish, before the expiry of the continuous period of five years which immediately follows the coming into force of section 88 of the Title Conditions (Scotland) Act [2003 \(asp 9\)](#) (prescriptive period for obligations arising by virtue of 1841 Act or 1840 Act), an obligation mentioned in sub-paragraph (ab) of paragraph 1 of this Schedule;”.

## **89 Repeal of Reversion Act 1469**

- (1) The Reversion Act [1469 \(c. 3\)](#) shall cease to have effect.
- (2) Subsection (1) above shall not affect any right of reversion constituted, before the appointed day, as a real right.