



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 11

SAVINGS, TRANSITIONAL AND GENERAL

General

122 Interpretation

- (1) In this Act, unless the context otherwise requires—
- “the 1979 Act” means the Land Registration (Scotland) Act 1979 (c. 33);
 - “the 2000 Act” means the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5);
 - “affirmative burden” shall be construed in accordance with section 2(2)(a) of this Act;
 - “ancillary burden” shall be construed in accordance with section 2(4) of this Act;
 - “appointed day” means the day appointed under section 71 of the 2000 Act;
 - “benefited property”—
 - (a) in relation to a real burden, shall be construed in accordance with section 1(2)(b) of this Act; and
 - (b) in relation to a title condition other than a real burden, means the land, or real right in land, to which the right to enforce the title condition is attached;
 - “burdened property”—
 - (a) in relation to a real burden, shall be construed in accordance with section 1(2)(a) of this Act; and
 - (b) in relation to a title condition other than a real burden, means the land, or real right in land, which is subject to the title condition;
 - “community” has the meaning given by section 26(2) of this Act;
 - “community burdens” shall be construed in accordance with section 25 of this Act;
 - “conservation body” means any body prescribed by order under subsection (4) of section 38 of this Act;

Status: Point in time view as at 23/10/2004. This version of this provision has been superseded.

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“conservation burden” shall be construed in accordance with subsection (1) of that section and includes (other than in subsections (1) and (2) of that section) a reference to a real burden the right to enforce which was—

- (a) preserved by virtue of section 27(1) of the 2000 Act (preservation of right to enforce conservation burden); or
- (b) obtained by virtue of section 27A(1) of that Act (nomination of conservation body or Scottish Ministers to have title to enforce conservation burden);

“constitutive deed” is the deed which sets out the terms of a title condition (or of a prospective title condition) but the expression includes any document in which the terms of the title condition in question are varied;

“deed of conditions” means a deed mentioned in section 32 of the Conveyancing (Scotland) Act 1874 (c. 94) (importation by reference) and registered before the appointed day having been executed in accordance with that section;

“the development management scheme” has the meaning given by section 71(3) of this Act;

“economic development burden” shall be construed in accordance with subsection (1) of section 45 of this Act and includes (other than in subsections (1) to (3) of that section) a reference to a real burden which was converted under section 18B of the 2000 Act (conversion into economic development burden);

“enactment” includes a local and personal or private Act;

“facility burden” means, subject to subsection (2) below, a real burden which regulates the maintenance, management, reinstatement or use of heritable property which constitutes, and is intended to constitute, a facility of benefit to other land (examples of property which might constitute such a facility being without prejudice to the generality of this definition, set out in subsection (3) below);

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“health care burden” shall be construed in accordance with subsection (1) of section 46 of this Act and includes (other than in subsections (1) to (3) of that section) a reference to a real burden which was converted under section 18C of the 2000 Act (conversion into health care burden);

“holder”, in relation to a title condition, means the person who has right to the title condition^{F2} but does not include a person who has title to enforce it only by virtue of any of paragraphs (a), (b) and (c) of section 8(2) of this Act];

“land” includes—

- (a) heritable property, whether corporeal or incorporeal, held as a separate tenement; and
- (b) land covered with water,

but does not include any estate of *dominium directum*;

“Lands Tribunal” means Lands Tribunal for Scotland;

[^{F3}“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);]

“maintenance” includes (cognate expressions being construed accordingly)—

- (a) repair or replacement; and
- (b) such demolition, alteration or improvement as is reasonably incidental to maintenance;

“manager”, in relation to related properties, means any person (including an owner of one of those properties or a firm) who is authorised (whether by virtue of this

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Act or otherwise) to act generally, or for such purposes as may be applicable in relation to a particular authorisation, in respect of those properties;

“manager burden” shall be construed in accordance with section 63(1) of this Act;

“maritime burden” shall be construed in accordance with subsection (1) of section 44 of this Act and includes (other than in that subsection) a reference to any real burden in relation to which the Crown has title and interest under section 60(1) of the 2000 Act (preserved right of Crown to maritime burdens);

“midcouple” means such midcouple or link in title as it is competent to specify, under section 5(1) of the Conveyancing (Scotland) Act 1924 (14 & 15 Geo. 5, c.27), in a deduction of title in terms of that Act;

“negative burden” shall be construed in accordance with section 2(2)(b) of this Act;

“notary public” includes, in a case where swearing or affirmation is to take place outwith Scotland, any person duly authorised by the law of the country or territory in question to administer oaths or receive affirmations in that country or territory;

“notice of converted servitude” shall be construed in accordance with section 80(4) and (5) of this Act;

“notice of preservation” shall be construed in accordance with section 50 of this Act;

“notice of termination” shall be construed in accordance with section 20 of this Act;

“owner” shall be construed in accordance with section 123 of this Act;

“personal pre-emption burden” and “personal redemption burden” shall be construed in accordance with section 18A(5) of the 2000 Act;

“personal real burden” shall be construed in accordance with section 1(3) of this Act;

“property” includes unit;

“real burden” has the meaning given by section 1 of this Act except that in construing that section for the purposes of this definition “land” shall be taken to include an estate of *dominium directum*;

“registering”, in relation to any document, means registering an interest in land or information relating to an interest in land (being an interest or information for which that document provides) in the Land Register of Scotland or, as the case may be, recording the document in the Register of Sasines (cognate expressions being construed accordingly);

“renewal date” has the meaning given by section 20(4)(d) of this Act;

“road” has the meaning given by section 151(1) of the Roads (Scotland) Act 1984 (c. 54) (interpretation);

“rural housing body” means any body prescribed by order under subsection (5) of section 43 of this Act;

“rural housing burden” shall be construed in accordance with subsection (1) of that section and includes a personal pre-emption burden the holder of which is a rural housing body;

“send” shall be construed in accordance with section 124 of this Act (cognate expressions being construed accordingly);

“service burden” means a real burden which relates to the provision of services to land other than the burdened property;

“sheltered or retirement housing development” has the meaning given by section 54(3) of this Act;

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[^{F4}“tenement” has the meaning given by section 26 of the Tenements (Scotland) Act 2004 (asp 11); and references to a flat in a tenement shall be construed accordingly;]

“terminator” shall be construed in accordance with section 20(2) of this Act;

“title condition” means—

- (a) a real burden;
- (b) a servitude;
- (c) an affirmative obligation imposed, in a servitude, on the person who is in right of the servitude;
- (d) a condition in a registrable lease if it is a condition which relates to the land (but not a condition which imposes either an obligation to pay rent or an obligation of relief relating to the payment of rent);
- (e) a condition or stipulation—
 - (i) imposed under subsection (2) of section 3 of the Registration of Leases (Scotland) Act 1857 (c. 26) (assignment of recorded leases) in an assignment which has been duly registered; or
 - (ii) contained in a deed registered under subsection (2A) or (5) of that section;
- (f) a condition in an agreement entered into under section 7 of the National Trust for Scotland Order Confirmation Act 1938 (c.iv); or
- (g) such other condition relating to land as the Scottish Ministers may, for the purposes of this paragraph, prescribe by order;

“unit” means any land which is designed to be held in separate ownership (whether it is so held or not); and

“variation”, in relation to a title condition, includes both—

- (a) imposition of a new obligation; and
- (b) provision that a property becomes a benefited property,

(cognate expressions being construed accordingly).

(2) In so far as it constitutes an obligation to maintain or reinstate which has been assumed—

- (a) by a local or other public authority; or
- (b) by virtue of any enactment, by a successor body to any such authority,

a real burden is neither—

- (i) a facility burden; nor
- (ii) for the purposes of sections 52 to 54(1) of this Act, to be regarded as imposed as mentioned in any of those sections.

(3) The examples referred to in the definition of “facility burden” in subsection (1) above are—

- (a) a common part of a tenement;
- (b) a common area for recreation;
- (c) a private road;
- (d) private sewerage; and
- (e) a boundary wall.

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Textual Amendments

- F1** S. 122(1): definition of "flat" omitted (23.10.2004) by virtue of [Tenements \(Scotland\) Act 2004](#) (asp 11), ss. 25, 34(3), [Sch. 4 para. 19\(a\)](#) (with s. 33)
- F2** S. 122(1): words in definition of "holder" added (22.10.2003) by [The Title Conditions \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2003](#) (S.S.I. 2003/503), art. 2, [Sch. 1 para. 15](#)
- F3** S. 122(1): definition of "local authority" inserted (23.10.2004) by [Tenements \(Scotland\) Act 2004](#) (asp 11), ss. 25, 34(3), [Sch. 4 para. 19\(b\)](#) (with s. 33)
- F4** S. 122(1): definition of "tenement" substituted (23.10.2004) by [Tenements \(Scotland\) Act 2004](#) (asp 11), ss. 25, 34(3), [Sch. 4 para. 19\(c\)](#) (with s. 33)

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