



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 9

TITLE CONDITIONS: POWERS OF LANDS TRIBUNAL

90 Powers of Lands Tribunal as respects title conditions

- (1) Subject to sections 97, 98 and 104 of this Act and to subsections (3) to (5) below, the Lands Tribunal may by order, on the application of—
- (a) an owner of a burdened property or any other person against whom a title condition (or purported title condition) is enforceable (or bears to be enforceable)—
 - (i) discharge it, or vary it, in relation to that property; or
 - (ii) if the title condition is a real burden or a rule of a development management scheme, determine any question as to its validity, applicability or enforceability or as to how it is to be construed;
 - (b) an owner of a benefited property, renew or vary, in relation to that property, a title condition which is—
 - (i) a real burden in respect of which intimation of a proposal to execute and register a notice of termination has been given under section 21 of this Act; or
 - (ii) a real burden or servitude affected by a proposal to register a conveyance, being a proposal of which notice has been given under section 107(4) of this Act; or
 - (c) an owner of a unit in a community, preserve as mentioned in section 34(3) or 37(1) of this Act, a community burden in respect of which intimation of a proposal to register a deed of variation or discharge has been given under section 34(1) or 36(1) of this Act;
 - (d) an owner of a unit of the development to which applies a development management scheme in respect of which intimation of a proposal to register a deed of disapplication has been given under subsection (1) of section 74 of this Act, preserve the scheme;
 - (e) the owners' association of a development to which applies a development management scheme in respect of which intimation of a proposal to register

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a conveyance, being a proposal of which notice has been given as mentioned in subsection (b)(ii) above, preserve the scheme;

but where the Lands Tribunal refuse an application under paragraph (b) or (c) above wholly, or an application under paragraph (b) partly, they shall in relation to the benefited property discharge the title condition, wholly or partly, accordingly or as the case may be shall in relation to the units not all of whose owners have granted the deed vary or discharge the community burden accordingly and where they refuse an application under paragraph (d) or (e) above, they shall disapply the development management scheme.

- (2) Paragraph (b) of subsection (1) above applies in relation to the application of a holder of a personal real burden as it applies to the application of an owner of a benefited property except that, for the purposes of any application made by virtue of this subsection, the words “in relation to that property” in paragraph (b) shall be disregarded as shall the words “in relation to the benefited property” in what follows paragraph (e) in that subsection.
- (3) It shall not be competent to make an application under subsection (1) above in relation to a title condition of a kind specified in schedule 11 to this Act.
- (4) It shall not be competent to make an application under subsection (1)(b), (c), (d) or (e) above—
 - (a) after the renewal date, or as the case may be the date specified by virtue of section 107(6)(d)(ii) of, or the expiry of the period mentioned in section 34(3), 37(1) or 74(3) of, this Act, except with the consent of the terminator or as the case may be of—
 - (i) the person proposing to register the conveyance or the deed of variation or discharge, or
 - (ii) the owners' association; or
 - (b) after there has been, in relation to the proposal, endorsement under section 23(1) or, as the case may be, execution of a relevant certificate applied for by virtue of section 107(1)(b), or endorsement under section 37(2) or 73(3), of this Act.
- (5) Variation which would impose a new obligation or would result in a property becoming a benefited property shall not be competent on an application—
 - (a) under subsection (1)(a)(i) above unless the owner of the burdened property consents; or
 - (b) under subsection (1)(b) above.
- (6) Subject to section 97(1) of this Act and to subsections (9) and (10) below, an order discharging ^{F1} . . . or varying a title condition may—
 - (a) where made under paragraph (a)(i) of subsection (1) above, direct the applicant; or
 - (b) where made by virtue of the refusal of an application under paragraph (b) or (c) of that subsection, direct the terminator or, as the case may be, the person proposing to register the conveyance or deed of variation or discharge,

to pay to any person who in relation to the title condition was an owner of the benefited property or, where there is no benefited property, to any holder of the title condition, such sum as the Lands Tribunal may think it just to award under one, but not both, of the heads mentioned in subsection (7) below.
- (7) The heads are—

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- (a) a sum to compensate for any substantial loss or disadvantage suffered by, as the case may be—
- (i) the owner, as owner of the benefited property; or
 - (ii) the holder of the title condition,
- in consequence of the discharge [^{F2} or variation;]
- (b) a sum to make up for any effect which the title condition produced, at the time when it was created, in reducing the consideration then paid or made payable for the burdened property.
- (8) Subject to section 97(1) of this Act and to subsection (11) below, an order discharging, renewing or varying a title condition may impose on the burdened property a new title condition or vary a title condition extant at the time the order is made.
- [^{F3}(8A) An order disapplying the development management scheme shall, where the deed of [^{F4}disapplication] makes such provision as is mentioned in section 73(2) of this Act, impose the real burdens in question.]
- (9) A direction under subsection (6) above shall be made only if the person directed consents.
- (10) Where an application under subsection (1)(b)(ii) above is refused, wholly or partly, any direction under subsection (6) above for payment to that person may be made only if that application was made by virtue of subsection (2) above.
- (11) An imposition under subsection (8) above shall be made only if the owner of the burdened property consents.
- (12) The jurisdiction conferred by subsection (1) above includes power, in relation to an application under paragraph (a)(ii) only of that subsection, to decline (with reason stated) to proceed to determine the question.

Textual Amendments

- F1** Word in s. 90(6) omitted (22.10.2003) by virtue of [The Title Conditions \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2003 \(S.S.I. 2003/503\)](#), art. 2, [Sch. 1 para. 9\(a\)](#)
- F2** Words in s. 90(7)(a) inserted (22.10.2003) by [The Title Conditions \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2003 \(S.S.I. 2003/503\)](#), art. 2, [Sch. 1 para. 9\(b\)](#)
- F3** S. 90(8A) inserted (22.10.2003) by [The Title Conditions \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2003 \(S.S.I. 2003/503\)](#), art. 2, [Sch. 1 para. 9\(c\)](#)
- F4** Word in s. 90(8A) substituted (23.10.2004) by [Tenements \(Scotland\) Act 2004 \(asp 11\)](#), ss. 25, 34(3), [Sch. 4 para. 16](#) (with s. 33)

Modifications etc. (not altering text)

- C1** S. 90 excluded (1.6.2010) by [The Network Rail \(Waverley Steps\) Order 2010 \(S.S.I. 2010/188\)](#), art. 17(5)

Commencement Information

- I1** S. 90 wholly in force; s. 90 in force for certain purposes at 4.4.2003, see [s.129\(2\)\(3\)](#); s. 90 otherwise in force at 28.11.2004 by [S.S.I. 2003/456](#), art. 2

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