

LONG LEASES (SCOTLAND) ACT 2012

EXPLANATORY NOTES

PART 2: CONVERSION OF CERTAIN LEASEHOLD CONDITIONS TO REAL BURDENS

Personal real burdens

Section 23: Conversion to personal pre-emption or redemption burden

94. This section allows a person with the right to enforce a qualifying condition which confers a right of pre-emption or redemption to convert that condition into a real burden to be known as a personal pre-emption burden or a personal redemption burden.
95. The entitled person is usually the landlord (of the qualifying lease or a superior lease) but in some circumstances is a neighbour.
96. Subsection (1) provides for the execution and registration of a notice. This must be done by the person with the right to enforce the qualifying condition. All *pro indiviso* landlords, for example, have to be parties to the notice.
97. Subsection (2) identifies the type of qualifying condition which may be converted.
98. Subsection (3) sets out the content of the notice. Further provision as to counter-obligations (paragraph (e)) is made in section 34.
99. Subsection (4) provides for registration of the notice against the burdened property. Registration can be against either the title of the owner or the title of the tenant.
100. Subsection (5) provides that the notice must be sworn or affirmed before a notary public. In the normal case this must be done personally but some exceptions are set out in subsection (6).
101. Subsection (7) converts the qualifying condition on the appointed day into a personal pre-emption burden or a personal redemption burden in favour of the person with the right to enforce (or that person's successor) provided that the requirements of the section have been complied with and that immediately before the appointed day the qualifying condition is still enforceable.
102. Subsection (8) makes clear that the benefit of the burden in question can be assigned or otherwise transferred to any person.
103. Subsection (9) lays down that the assignation is completed by registration.
104. Subsection (11) provides the method for deduction of title in cases where under the general law deduction of title would be required.
105. The section is subject to section 36, which makes further provision in relation to notices, and section 75, which deals with pre-registration requirements for notices.

Section 24: Conversion to economic development burden

106. This section allows a local authority, or the Scottish Ministers, with the right to enforce a qualifying condition which was imposed for the purpose of promoting economic development to convert that condition into an economic development burden in their favour. An economic development burden may lay down how the property should be used or may require money to be paid to the local authority or the Scottish Ministers. The relevant provision in the Title Conditions (Scotland) Act 2003 is section 45.
107. Subsection (1) provides for the execution and registration of a notice.
108. Subsection (2) sets out the content of the notice. Further provision as to counter-obligations (paragraph (f)) is made in section 34.
109. Subsection (3) provides for registration of the notice against the burdened property. Registration can be against either the title of the owner or the title of the tenant.
110. Subsection (4) converts the qualifying condition on the appointed day into an economic development burden in favour of the local authority or the Scottish Ministers provided that the requirements of the section have been complied with and that immediately before the appointed day the qualifying condition is still enforceable.
111. The section is subject to section 36, which makes further provision in relation to notices, and section 75, which deals with pre-registration requirements for notices.

Section 25: Conversion to health care burden

112. This section allows the Scottish Ministers when they have the right to enforce a qualifying condition which was imposed for the purpose of promoting the provision of facilities for health care to convert that condition into a health care burden in their favour.
113. Subsection (1) provides for the execution and registration of a notice.
114. Subsection (2) sets out the content of the notice. Further provision as to counter-obligations (paragraph (e)) is made in section 34.
115. Subsection (3) provides for registration of the notice against the burdened property. Registration can be against either the title of the owner or the title of the tenant.
116. Subsection (4) converts the qualifying condition on the appointed day into a health care burden in favour of the Scottish Ministers provided that the requirements of the section have been complied with and that immediately before the appointed day the qualifying condition is still enforceable.
117. The section is subject to section 36, which makes further provision in relation to notices, and section 75, which deals with pre-registration requirements for notices.

Section 26: Conversion to climate change burden

118. This section allows a public body (defined in subsection (5)) or trust or the Scottish Ministers with the right to enforce a qualifying condition which was imposed for the purpose of reducing greenhouse gas emissions (defined in subsection (5)) to convert that condition into a climate change burden in their favour. Climate change burdens were introduced by the Climate Change (Scotland) Act 2009. Section 68 of the 2009 Act inserted section 46A into the Title Conditions (Scotland) Act 2003.
119. Subsection (2) sets out the content of the notice. Further provision as to counter-obligations (paragraph (f)) is made in section 34.
120. Subsection (3) provides for registration of the notice against the burdened property. Registration can be against either the title of the owner or the title of the tenant.

*These notes relate to the Long Leases (Scotland) Act 2012
(asp 9) which received Royal Assent on 7 August 2012*

121. Subsection (4) converts the qualifying condition on the appointed day into a climate change burden in favour of the public body, trust or the Scottish Ministers provided that the requirements of the section have been complied with and that immediately before the appointed day the qualifying condition is still enforceable.
122. Subsection (5) lays down various definitions. The definitions of “emissions” and “greenhouse gas” are taken from the Climate Change (Scotland) Act 2009. The definition of “public body” is taken from an order made by the Scottish Ministers under section 38(4) of the Title Conditions (Scotland) Act 2003.
123. The section is subject to section 36, which makes further provision in relation to notices, and section 75, which deals with pre-registration requirements for notices.

Section 27: Conversion to conservation burden: rule one

124. This section allows a conservation body, or the Scottish Ministers, with the right to enforce a qualifying condition which promotes conservation to convert that condition into a conservation burden in their favour. “Conservation burden” is defined in section 38(1) of the Title Conditions (Scotland) Act 2003. “Conservation body” is defined in section 122(1) of the 2003 Act and refers to any body prescribed by an order made by the Scottish Ministers under section 38(4) of the 2003 Act.
125. Subsection (1) provides for the execution and registration of a notice.
126. Subsection (2) identifies the type of qualifying condition which may be converted. This mirrors the definition of conservation burden in section 38(1) of the 2003 Act.
127. Subsection (3) sets out the content of the notice. Further provision as to counter-obligations (paragraph (f)) is made in section 34.
128. Subsection (4) provides for registration of the notice against the burdened property. Registration can be against either the title of the owner or the title of the tenant.
129. Subsection (5) converts the qualifying condition on the appointed day into a conservation burden for the benefit of the public in favour of the conservation body or the Scottish Ministers provided that the requirements of the section have been complied with and that immediately before the appointed day the qualifying condition is still enforceable.
130. Subsection (6) qualifies the reference in subsection (5) to a conservation body or the Scottish Ministers so as to include successors provided that they are either a conservation body or the Scottish Ministers. In any other case the notice falls and the condition is extinguished on the appointed day.
131. The section is subject to section 36, which makes further provision in relation to notices, and section 75, which deals with pre-registration requirements for notices.

Section 28: Conversion to conservation burden: rule two

132. This section allows a person with the right to enforce a qualifying condition which promotes conservation to convert that condition into a conservation burden in favour of a conservation body or the Scottish Ministers. The entitled person is usually the landlord (of the qualifying lease or a superior lease) but in some circumstances is a neighbour. “Conservation burden” is defined in section 38(1) of the Title Conditions (Scotland) Act 2003. “Conservation body” is defined in section 122(1) of the 2003 Act and refers to any body prescribed by an order made by the Scottish Ministers under section 38(4) of the 2003 Act.
133. Subsection (1) provides for the execution and registration of a notice. This must be done by the person with the right to enforce the qualifying condition. All *pro indiviso* landlords, for example, have to be parties to the notice.

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134. Subsection (2) requires the consent of the nominee to be obtained before a copy of the notice is sent to the tenant under the qualifying lease under section 75(2) or in other cases before the notice is executed. The nominee is required to sign the notice by way of indicating consent.
135. Subsection (3) sets out the content of the notice. Further provision as to counter-obligations is made in section 34.
136. Subsection (4) provides for registration of the notice against the burdened property. Registration can be against either the title of the owner or the title of the tenant.
137. Subsection (5) converts the qualifying condition on the appointed day into a conservation burden for the benefit of the public in favour of the nominated conservation body or the Scottish Ministers provided that the requirements of the section have been complied with and that immediately before the appointed day the qualifying condition is still enforceable by the person with the right to enforce or that person's successor.
138. The section is subject to section 36, which makes further provision in relation to notices, and section 75, which deals with pre-registration requirements for notices. The adjustment to section 36(3)(b) makes clear that a discharge of a section 28 notice also requires the consent of the nominated person.