

LONG LEASES (SCOTLAND) ACT 2012

EXPLANATORY NOTES

PART 2: CONVERSION OF CERTAIN LEASEHOLD CONDITIONS TO REAL BURDENS

Other real burdens

Section 29: Conversion to facility or service burden

139. Subsection (1) provides for the automatic conversion of qualifying conditions concerned with the maintenance, management, reinstatement or use of facilities into facility burdens. Typical examples of facilities are given in subsection (3). “Facility burden” is defined in section 122(1) of the Title Conditions (Scotland) Act 2003.
140. Obligations to maintain or reinstate which have been taken over by a local or other public authority are excluded (see section 33).
141. Subsection (2) provides for the automatic conversion of qualifying conditions concerned with the provision of services to other land into service burdens. “Service burden” is defined in section 122(1) of the Title Conditions (Scotland) Act 2003.

Section 30: Conversion to manager burden

142. This section provides for the automatic conversion of a qualifying condition which confers a power of management over a group of related properties into a real burden known as a manager burden. “Manager burden” is defined in section 63(1) of the Title Conditions (Scotland) Act 2003. Such burdens are time limited, usually to five years from creation (section 63(4) to (7) of the 2003 Act), which in the case of converted conditions is the date of registration of the qualifying lease or other constitutive deed.
143. Subsections (3) and (4) provide that whether properties are related depends on the circumstances of each case and gives a list of indicators. They are modelled on section 66(1) of the Title Conditions (Scotland) Act 2003.

Section 31: Conversion where common scheme affects related properties

144. This section applies to a “qualifying condition” under this Act the regime provided by section 53 of the Title Conditions (Scotland) Act 2003 for real burdens. It draws on the concepts of “common scheme” and “related properties”, used in the 2003 Act. Essentially, qualifying conditions will be imposed under a common scheme insofar as they apply identical or equivalent conditions to each property.
145. The effect of subsection (1) is to convert automatically qualifying conditions which meet the criteria into real burdens in respect of which each property covered by the scheme will be both a benefited and a burdened property. The burdens created will be community burdens. Part 2 of the Title Conditions (Scotland) Act 2003 provides for community burdens and section 25 of the 2003 Act defines “community burdens”.

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

146. Subsections (2) and (3) provide that whether properties are related depends on the circumstances of each case and gives a list of indicators. A typical example would be flats in the same tenement.
147. Subsection (4) prevents rights of pre-emption, redemption or reversion being conferred by virtue of this section.

Section 32: Conversion where expressly enforceable by certain third parties

148. Sometimes the lease makes clear that, in addition to the landlord, the conditions (or some of them) are to be enforceable by neighbours, i.e. by the owners or tenants of other land. Without express provision the rights fall with the conditions themselves. This section therefore provides for the conversion of such conditions into real burdens.