



# Long Leases (Scotland) Act 2012

## 2012 asp 9

### PART 2

#### CONVERSION OF CERTAIN LEASEHOLD CONDITIONS TO REAL BURDENS

##### *Determination of “qualifying conditions”*

#### **10 Qualifying conditions**

- (1) A condition is a “qualifying condition” if—
  - (a) it is constituted in accordance with subsection (2),
  - (b) it is enforceable against the tenant (and the successors of the tenant) of—
    - (i) the qualifying lease, or
    - (ii) any superior lease,
  - (c) it complies with subsection (3), and
  - (d) it is not an excluded condition.
- (2) A condition is constituted in accordance with this subsection if it is set out in—
  - (a) the qualifying lease,
  - (b) any superior lease which is not a lease granted by virtue of section 17(1) of the Land Tenure Reform (Scotland) Act 1974 (c.38) (interposed leases),
  - (c) any deed varying a lease mentioned in paragraph (a) or (b), or
  - (d) any assignation of or other deed relating to a lease mentioned in paragraph (a) or (b) where the assignation or other deed is registered under section 3 of the Registration of Leases (Scotland) Act 1857 (c.26) (assignation of leases).
- (3) A condition complies with this subsection if it consists of—
  - (a) an obligation to do something (including an obligation to defray, or contribute towards, some cost),
  - (b) an obligation to refrain from doing something,
  - (c) a right to enter, or otherwise make use of, property which is for a purpose ancillary to an obligation mentioned in paragraph (a) or (b), or
  - (d) a provision for management or administration which is for a purpose ancillary to an obligation mentioned in paragraph (a) or (b).

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- (4) In determining whether a condition complies with subsection (3), regard is to be had to the effect of the condition rather than to the way in which the condition is expressed.
- (5) A condition is an “excluded condition” if—
- (a) it is an obligation to pay rent,
  - (b) it confers a right of irritancy,
  - (c) the provision constituting it states that it is enforceable only by irritancy,
  - (d) it imposes a restriction on—
    - (i) assignation, or
    - (ii) subletting,
 that is neither a right of pre-emption, a right of redemption or reversion nor any other type of option to acquire the lease, or
  - (e) it imposes a monetary penalty which is payable on the failure of the tenant to comply with any of the other conditions under the lease.

## **11 Restriction on conversion of qualifying conditions**

A qualifying condition does not become a real burden by virtue of this Part unless the real burden that would be so created complies with the provisions of section 3 (omitting subsection (5)) of the Title Conditions (Scotland) Act 2003 (asp 9).

*Meaning of “qualifying land”*

## **12 Meaning of “qualifying land”**

In this Act, “qualifying land”, in relation to a qualifying condition, means the land which forms the subjects of the qualifying lease.

*Entitlement to enforce qualifying conditions*

## **13 Determination of who may enforce condition**

- (1) Subsections (2) and (3) have effect for the purposes of determining in relation to sections 14 to 28 whether a person is entitled to enforce a qualifying condition.
- (2) A person having right to property to which the entitlement to enforce a qualifying condition attaches may enforce the qualifying condition whether or not the person has completed title to that right (and where more than one person comes within that description, only the person who most recently acquired that right may enforce the qualifying condition).
- (3) Where before the appointed day the tenant under a lease—
- (a) assigns the lease in part, and
  - (b) includes in the assignation or (as the case may be) a deed registered under section 3 of the Registration of Leases (Scotland) Act 1857 (c.26), a qualifying condition,
- a person who is a tenant or subtenant of the part of the land that is not so assigned (or a successor as tenant or subtenant of such person) may enforce the qualifying condition.

- (4) In sections 14 to 21, a person is an “entitled person” if that person is entitled to enforce a qualifying condition (whether as landlord or otherwise).
- (5) Where the entitlement to enforce a qualifying condition is held in pro indiviso shares—
  - (a) if the entitlement is held as landlord, any reference in sections 14 to 21 to an entitled person is a reference to all of the persons holding such a share, and
  - (b) if the entitlement is held otherwise than as landlord, any reference in those sections to an entitled person is a reference to any of the persons holding such a share.

### *Conversion of conditions to burdens*

## **14 Conversion by nomination of benefited property**

- (1) This section applies to a qualifying condition where—
  - (a) at least one conversion condition is met, or
  - (b) the Lands Tribunal makes an order under section 21.
- (2) An entitled person may, before the appointed day, prospectively convert a qualifying condition into a real burden by executing and registering a notice.
- (3) The notice must—
  - (a) be in the prescribed form,
  - (b) set out the title of the entitled person to enforce the qualifying condition,
  - (c) identify the qualifying land, or any part of it, which the entitled person nominates as the burdened property in relation to the real burden,
  - (d) identify the land mentioned in subsection (5), or any part of it, which the entitled person nominates as a benefited property in relation to the burden,
  - (e) in a case where this section applies by virtue of an order under section 21, state that such an order has been made,
  - (f) in any other case, specify which of the conversion conditions is (or are) met,
  - (g) set out the terms of the qualifying condition, and
  - (h) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the entitled person.
- (4) The conversion conditions are—
  - (a) that the land which would by virtue of this section and sections 15 and 16 become a benefited property has on it a permanent building which is in use wholly or mainly as a place of human—
    - (i) habitation, or
    - (ii) resort,and that building is, at some point, within 100 metres (measuring along a horizontal plane) of the land which would by virtue of this section and sections 15 and 16 become the burdened property,
  - (b) that the qualifying condition comprises a right of pre-emption or of redemption,
  - (c) that the land which would by virtue of this section and sections 15 and 16 become a benefited property comprises—
    - (i) minerals, or

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(ii) salmon fishings or some other incorporeal property,  
and it is apparent from the terms of the qualifying condition that the condition  
was included in the lease for the benefit of such land.

- (5) The land referred to in subsection (3)(d) is land, other than the qualifying land,  
which—
- (a) if the land is not subject to a qualifying or exempt lease, the entitled person  
is owner of, or
  - (b) if the land is subject to such a lease, the entitled person is tenant of under that  
lease.
- (6) Where the entitled person holds the entitlement to enforce the qualifying condition  
otherwise than as landlord—
- (a) the land referred to in subsection (5)(a) is the land to which the entitlement to  
enforce the condition attaches, and
  - (b) the lease referred to in subsection (5)(b) is the lease to which the entitlement  
to enforce the condition attaches.

## **15 Conversion by nomination: registration**

- (1) For the purposes of section 14(2), a notice is registered only when registered against  
both the burdened property and the benefited property.
- (2) Registration under subsection (1) must—
- (a) in the case of the burdened property, be against the title of—
    - (i) the owner of the property, or
    - (ii) the tenant under the qualifying lease of the property, and
  - (b) in the case of a benefited property, be against the title of—
    - (i) the owner of the property, or
    - (ii) if the property in question is subject to a qualifying lease or exempt  
lease, the tenant under such lease.
- (3) Before submitting any notice for registration under section 14, the entitled person must  
swear or affirm before a notary public that to the best of the knowledge and belief of  
the entitled person all the information contained in the notice is true.
- (4) For the purposes of subsection (3), if the entitled person is—
- (a) an individual unable by reason of legal disability, or incapacity, to swear  
or affirm as mentioned in that subsection, then a legal representative of the  
entitled person may swear or affirm, or
  - (b) not an individual, then any person authorised to sign documents on its behalf  
may swear or affirm,
- and any reference in that subsection to an entitled person is to be construed  
accordingly.
- (5) This section and section 14 are subject to sections 36 and 75.

## **16 Conversion by nomination: effect**

- (1) This section applies in relation to a qualifying condition where—
- (a) an entitled person registers a notice in accordance with sections 14 and 15, and

- (b) immediately before the appointed day the qualifying condition is still enforceable by the entitled person (or that person's successor).
- (2) On the appointed day, the qualifying condition becomes a real burden in relation to which—
  - (a) the land identified in pursuance of section 14(3)(c) is the burdened property, and
  - (b) the land identified in pursuance of section 14(3)(d) is a benefited property.

## **17 Conversion by agreement**

- (1) An entitled person may, before the appointed day—
  - (a) serve notice on the tenant under the qualifying lease, that the entitled person seeks to enter into an agreement with the tenant under this section—
    - (i) prospectively converting a qualifying condition into a real burden,
    - (ii) prospectively nominating the qualifying land, or any part of it, as the burdened property in relation to such burden, and
    - (iii) prospectively nominating land mentioned in subsection (2), or any part of that land, as a benefited property in relation to such burden,
  - (b) subject to subsection (5), enter into such an agreement with the tenant, and
  - (c) register that agreement.
- (2) The land referred to in subsection (1)(a)(iii) is land, other than the qualifying land, which—
  - (a) if the land is not subject to a qualifying or exempt lease, the entitled person is owner of, or
  - (b) if the land is subject to such a lease, the entitled person is tenant of under that lease.
- (3) Where the entitled person holds the entitlement to enforce the qualifying condition otherwise than as landlord—
  - (a) the land referred to in subsection (2)(a) is the land to which the entitlement to enforce the condition attaches, and
  - (b) the lease referred to in subsection (2)(b) is the lease to which the entitlement to enforce the condition attaches.
- (4) The notice referred to in subsection (1) must—
  - (a) be in the prescribed form,
  - (b) set out the title of the entitled person to enforce the qualifying condition,
  - (c) identify the land nominated as the burdened property,
  - (d) identify the land nominated as a benefited property,
  - (e) set out the terms of the qualifying condition, and
  - (f) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the entitled person.
- (5) If the entitled person and the tenant think fit they may, by the agreement, modify the qualifying condition or any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the entitled person (or both the qualifying condition and any such counter-obligation).
- (6) An agreement mentioned in subsection (1)(b) must be a written agreement which—

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- (a) expressly states that it is made under this section, and
- (b) includes all the information, other than that relating to service, required to be set out in completing the notice the form of which is prescribed under subsection (4)(a).

(7) This section is subject to section 36.

## **18 Conversion by agreement: registration**

- (1) For the purposes of section 17(1), an agreement is registered only when registered against both the burdened property and the benefited property.
- (2) Registration under subsection (1) must—
  - (a) in the case of the burdened property, be against the title of—
    - (i) the owner of the property, or
    - (ii) the tenant under the qualifying lease of the property, and
  - (b) in the case of a benefited property, be against the title of—
    - (i) the owner of the property, or
    - (ii) if the property in question is subject to a qualifying lease or exempt lease, the tenant under such lease.

## **19 Conversion by agreement: effect**

- (1) This section applies in relation to a qualifying condition where—
  - (a) sections 17(1)(b) and (c) and (6) and 18 are complied with, and
  - (b) immediately before the appointed day the qualifying condition is still enforceable by the entitled person (or that person's successor).
- (2) On the appointed day, the qualifying condition becomes a real burden in relation to which—
  - (a) the land identified in pursuance of section 17(4)(c) is the burdened property, and
  - (b) the land identified in pursuance of section 17(4)(d) is a benefited property.

## **20 Conversion by agreement: title not completed**

- (1) Subsection (2) applies for the purposes of section 17 where—
  - (a) the entitled person has not completed title to—
    - (i) the property by virtue of which such person is entitled to enforce a qualifying condition, or
    - (ii) the land nominated as a benefited property, and
  - (b) section 101 of the Land Registration etc. (Scotland) Act 2012 (asp 5) (circumstances where unnecessary to deduce title) does not apply.
- (2) The entitled person may enter into an agreement under section 17 only if in the agreement the entitled person deduces title from the person who appears in the Register of Sasines as having the last recorded title to the interest in question.
- (3) Subsection (4) applies for the purposes of section 17 where—
  - (a) the tenant has not completed title to the qualifying lease, and

- (b) section 101 of the Land Registration etc. (Scotland) Act 2012 (asp 5) (circumstances where unnecessary to deduce title) does not apply.
- (4) The tenant may enter into an agreement under section 17 only if in the agreement the tenant deduces title from the person who appears in the Register of Sasines as having the last recorded title to the interest in question.

#### *Applications relating to section 14*

### **21 Lands Tribunal order**

- (1) This section applies where an entitled person cannot proceed under section 14(2) because none of the conditions set out in subsection (4) (“the conversion conditions”) of that section are met.
- (2) The entitled person may apply to the Lands Tribunal for an order under subsection (5).
- (3) An application may be made under subsection (2) only if the entitled person has first, in pursuance of section 17, attempted to reach agreement as respects the qualifying condition in question with the tenant under the qualifying lease.
- (4) An application under subsection (2)—
  - (a) must include a description by the entitled person of the requisite attempt to reach agreement, and
  - (b) must be made not later than 1 year after the day on which this section comes into force.
- (5) The Lands Tribunal may make an order dispensing with the need for any of the conversion conditions to be met if satisfied that, were the qualifying condition to be extinguished, there would be material detriment to the value or enjoyment of the entitled person’s ownership (taking such person to have ownership) of the land which is to be identified, in pursuance of section 14(3)(d), as a benefited property.
- (6) The decision of the Lands Tribunal on an application under subsection (2) is final.
- (7) A person opposing an application made under subsection (2) incurs no liability in respect of expenses incurred by the entitled person unless, in the opinion of the Lands Tribunal, the actings of the person opposing are vexatious or frivolous.

### **22 Dealing with application under section 21**

- (1) This section applies where the Lands Tribunal receives an application under section 21.
- (2) The Lands Tribunal must give notice of the application, whether by way of advertisement or otherwise, to—
  - (a) the tenant under the qualifying lease, and
  - (b) if the Lands Tribunal thinks fit, any other person.
- (3) Any person (whether or not the person has received notice under subsection (2)) who—
  - (a) is a tenant under the qualifying lease, or
  - (b) is affected by that qualifying condition or by its proposed constitution as a real burden,

may oppose or make representations in relation to the application.

- (4) The Lands Tribunal—
- (a) must allow any such person as is mentioned in subsection (3), and
  - (b) may allow any other person who appears to it to be affected by the qualifying condition to which the application relates or its proposed constitution as a real burden,
- to be heard in relation to the application.

### *Personal real burdens*

## **23 Conversion to personal pre-emption or redemption burden**

- (1) Without prejudice to section 14, the person entitled to enforce a qualifying condition mentioned in subsection (2) (whether as landlord or otherwise) may, before the appointed day, prospectively convert that qualifying condition into a personal pre-emption burden or (as the case may be) into a personal redemption burden by executing and registering a notice.
- (2) The qualifying condition referred to in subsection (1) is a condition comprising—
- (a) a right of pre-emption, or
  - (b) a right of redemption.
- (3) The notice referred to in subsection (1) must—
- (a) be in the prescribed form,
  - (b) set out the title to enforce the qualifying condition of the person executing and registering the notice,
  - (c) identify the qualifying land (or any part of such land),
  - (d) set out the terms of the qualifying condition, and
  - (e) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the person executing and registering the notice.
- (4) For the purposes of subsection (1)—
- (a) a notice is registered only when registered against the land identified in pursuance of subsection (3)(c), and
  - (b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.
- (5) Before submitting any notice for registration under this section, the person entitled to enforce the qualifying condition must swear or affirm before a notary public that to the best of the knowledge and belief of that person all the information contained in the notice is true.
- (6) For the purposes of subsection (5), if the person entitled to enforce the qualifying condition is—
- (a) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in that subsection, then a legal representative of that person may swear or affirm, or
  - (b) not an individual, then any person authorised to sign documents on its behalf may swear or affirm,



and any reference in that subsection to the person entitled to enforce the qualifying condition is to be construed accordingly.

- (7) If subsections (1) to (6) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the person who executed and registered the notice under subsection (1) (or that person's successor) then, on that day—
  - (a) the qualifying condition is converted into a real burden in favour of that person, to be known as a “personal pre-emption burden” or (as the case may be) as a “personal redemption burden”, and
  - (b) the land identified in pursuance of subsection (3)(c) becomes the burdened property.
- (8) The right to a personal pre-emption burden or personal redemption burden may be assigned or otherwise transferred to any person.
- (9) An assignation or transfer under subsection (8) takes effect on registration.
- (10) Where the holder of a personal pre-emption burden or personal redemption burden does not have a completed title—
  - (a) title may be completed by the holder registering a notice of title, or
  - (b) without completing title, the holder may grant a deed—
    - (i) assigning the right to the burden, or
    - (ii) discharging, in whole or in part, the burden.
- (11) The holder must, in a deed granted under subsection (10)(b), deduce title from the person who appears in the Register of Sasines as having the last recorded title to the burden in question unless the deed is one to which section 101 of the Land Registration etc. (Scotland) Act 2012 (asp 5) (circumstances where unnecessary to deduce title) applies.
- (12) This section is subject to sections 36 and 75.

## **24 Conversion to economic development burden**

- (1) Where a local authority is, or the Scottish Ministers are, entitled to enforce a qualifying condition which is imposed for the purpose of promoting economic development, it or they may, before the appointed day, prospectively convert that qualifying condition into an economic development burden by executing and registering a notice.
- (2) The notice must—
  - (a) be in the prescribed form,
  - (b) set out the title to enforce the qualifying condition of the person executing and registering the notice,
  - (c) state that such person is a local authority or the Scottish Ministers,
  - (d) identify the qualifying land (or any part of such land),
  - (e) set out the terms of the qualifying condition,
  - (f) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the person executing and registering the notice, and
  - (g) state that the qualifying condition was imposed for the purpose of promoting economic development and provide information in support of that statement.
- (3) For the purposes of subsection (1)—

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- (a) a notice is registered only when registered against the land identified in pursuance of subsection (2)(d), and
  - (b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.
- (4) If subsections (1) to (3) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the local authority or the Scottish Ministers then, on that day, the qualifying condition becomes an economic development burden—
- (a) in favour of the local authority or (as the case may be) the Scottish Ministers, and
  - (b) in relation to which the land identified in pursuance of subsection (2)(d) is the burdened property.
- (5) This section is subject to sections 36 and 75.

## **25 Conversion to health care burden**

- (1) Where the Scottish Ministers are entitled to enforce a qualifying condition which is imposed for the purpose of promoting the provision of facilities for health care, they may, before the appointed day, prospectively convert that qualifying condition into a health care burden by executing and registering a notice.
- (2) The notice must—
- (a) be in the prescribed form,
  - (b) set out the title of the Scottish Ministers to enforce the qualifying condition,
  - (c) identify the qualifying land (or any part of such land),
  - (d) set out the terms of the qualifying condition,
  - (e) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the Scottish Ministers, and
  - (f) state that the qualifying condition was imposed for the purpose of promoting the provision of facilities for health care and provide information in support of that statement.
- (3) For the purposes of subsection (1)—
- (a) a notice is registered only when registered against the land identified in pursuance of subsection (2)(c), and
  - (b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.
- (4) If subsections (1) to (3) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the Scottish Ministers then, on that day, the qualifying condition becomes a health care burden—
- (a) in favour of the Scottish Ministers, and
  - (b) in relation to which the land identified in pursuance of subsection (2)(c) is the burdened property.
- (5) This section is subject to sections 36 and 75.

## 26 Conversion to climate change burden

- (1) Where a public body or trust is, or the Scottish Ministers are, entitled to enforce a qualifying condition which is imposed for the purpose of reducing greenhouse gas emissions, it or they may, before the appointed day, prospectively convert that qualifying condition into a climate change burden by executing and registering a notice.
- (2) The notice must—
  - (a) be in the prescribed form,
  - (b) set out the title to enforce the qualifying condition of the person executing and registering the notice,
  - (c) state that such person is a public body, trust or the Scottish Ministers,
  - (d) identify the qualifying land (or any part of such land),
  - (e) set out the terms of the qualifying condition,
  - (f) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the person executing and registering the notice, and
  - (g) state that the qualifying condition was imposed for the purpose of reducing greenhouse gas emissions and provide information in support of that statement.
- (3) For the purposes of subsection (1)—
  - (a) a notice is registered only when registered against the land identified in pursuance of subsection (2)(d), and
  - (b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.
- (4) If subsections (1) to (3) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the public body, trust or the Scottish Ministers then, on that day, the qualifying condition becomes a climate change burden—
  - (a) in favour of the public body, the trust or (as the case may be) the Scottish Ministers, and
  - (b) in relation to which the land identified in pursuance of subsection (2)(d) is the burdened property.
- (5) In this section—

“emissions” has the meaning given by section 17(1) of the Climate Change (Scotland) Act 2009 (asp 12),

“greenhouse gas” has the meaning given by section 10(1) of that Act,

“public body” means a body listed in Part I or II of the Schedule to the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 (SSI 2003/453).
- (6) This section is subject to sections 36 and 75.

## 27 Conversion to conservation burden: rule one

- (1) Where a conservation body is, or the Scottish Ministers are, entitled to enforce a qualifying condition of the category described in subsection (2), it or they may, before

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the appointed day, prospectively convert that qualifying condition into a conservation burden for the benefit of the public by executing and registering a notice.

- (2) The category is those qualifying conditions which have the purpose of preserving or protecting—
  - (a) the architectural or historical characteristics of land, or
  - (b) any other special characteristics of land (including, without prejudice to the generality of this paragraph, a special characteristic derived from the flora, fauna or general appearance of the land).
- (3) The notice referred to in subsection (1) must—
  - (a) be in the prescribed form,
  - (b) set out the title to enforce the qualifying condition of the person executing and registering the notice,
  - (c) state that such person is a conservation body or the Scottish Ministers,
  - (d) identify the qualifying land (or any part of such land),
  - (e) set out the terms of the qualifying condition, and
  - (f) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the person executing and registering the notice.
- (4) For the purposes of subsection (1)—
  - (a) a notice is registered only when registered against the land identified in pursuance of subsection (3)(d), and
  - (b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.
- (5) If subsections (1) to (4) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the conservation body or the Scottish Ministers then, on that day, the qualifying condition becomes a conservation burden—
  - (a) in favour of the conservation body or (as the case may be) the Scottish Ministers, and
  - (b) in relation to which the land identified in pursuance of subsection (3)(d) is the burdened property.
- (6) The references in subsection (5) to—
  - (a) the conservation body include references to—
    - (i) any conservation body which is, or
    - (ii) the Scottish Ministers where they are,
 its successor as the person entitled to enforce the qualifying condition, and
  - (b) the Scottish Ministers include references to a conservation body which is their successor as such person.
- (7) This section is subject to sections 36 and 75.

## **28 Conversion to conservation burden: rule two**

- (1) The person (not being a conservation body or the Scottish Ministers) entitled to enforce a qualifying condition of the category described in section 27(2) (whether as landlord or otherwise) may before the appointed day—
  - (a) prospectively convert that condition into a conservation burden for the benefit of the public, and

- (b) nominate a conservation body or the Scottish Ministers to have title to enforce that burden,  
by executing and registering a notice.
- (2) Subsection (1) applies only where the consent of the nominee to being so nominated is obtained—
  - (a) in a case where sending a copy of the notice, in compliance with section 75(2), is reasonably practicable, before that copy is so sent, and
  - (b) in any other case, before the notice is executed.
- (3) The notice referred to in subsection (1) must—
  - (a) be in the prescribed form,
  - (b) set out the title to enforce the qualifying condition of the person executing and registering the notice,
  - (c) state that the nominee is a specific conservation body or the Scottish Ministers (as the case may be), and
  - (d) comply with section 27(3)(d) to (f).
- (4) For the purposes of subsection (1)—
  - (a) a notice is registered only when registered against the land identified in pursuance of subsection (3)(d), and
  - (b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.
- (5) If subsections (1) to (4) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the person who executed and registered the notice under subsection (1) (or that person's successor) then, on that day, the qualifying condition becomes a conservation burden—
  - (a) in favour of the conservation body or (as the case may be) the Scottish Ministers, and
  - (b) in relation to which the land identified in pursuance of subsection (3)(d) is the burdened property.
- (6) This section is subject to sections 36 and 75 except that, in the application of subsection (3)(b) of section 36 for the purposes of this subsection, such discharge as is mentioned in that subsection is to be taken to require the consent of the nominated person.

#### *Other real burdens*

### **29 Conversion to facility or service burden**

- (1) Where a qualifying condition regulates the maintenance, management, reinstatement or use of heritable property which constitutes, and is intended to constitute, a facility of benefit to land other than the qualifying land then, on the appointed day, such condition becomes a facility burden in relation to which—
  - (a) the qualifying land is the burdened property, and
  - (b) the heritable property which constitutes the facility and any land to which the facility is (and is intended to be) of benefit is the benefited property.

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*Status: This is the original version (as it was originally enacted).*

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- (2) Where a qualifying condition relates to the provision of services to land other than the qualifying land, then the qualifying condition, on the appointed day, becomes a service burden in relation to which—
  - (a) the qualifying land is the burdened property, and
  - (b) any land to which the services are provided is the benefited property.
- (3) Without prejudice to the generality of subsection (1), examples of property which might constitute a facility mentioned in that subsection are—
  - (a) a common part of a tenement,
  - (b) a common area for recreation,
  - (c) a private road,
  - (d) private sewerage,
  - (e) a boundary wall.

### **30 Conversion to manager burden**

- (1) Where a qualifying condition confers on such person as may be specified in the condition power to—
  - (a) act as the manager of related properties,
  - (b) appoint some other person to be such manager, or
  - (c) dismiss any person appointed by virtue of the power mentioned in paragraph (b),
 then, on the appointed day, such condition becomes a real burden in favour of such person and in relation to such burden the qualifying land is the burdened property.
- (2) A real burden constituted by virtue of subsection (1) is a manager burden.
- (3) For the purposes of subsection (1), whether properties are related properties is to be inferred from all the circumstances.
- (4) Without prejudice to the generality of this section, circumstances giving rise to such an inference might include—
  - (a) the convenience of managing the properties together because they share—
    - (i) some common feature, or
    - (ii) an obligation for common maintenance of some facility,
  - (b) it being evident that the properties constitute a group of properties on which qualifying conditions are imposed under a common scheme, or
  - (c) there being shared rights to common property.

### **31 Conversion where common scheme affects related properties**

- (1) Where qualifying conditions are imposed under a common scheme on a group of related properties, such conditions, on the appointed day, become real burdens in relation to which each property is a benefited and a burdened property.
- (2) For the purposes of subsection (1), whether properties are related properties is to be inferred from all the circumstances.
- (3) Without prejudice to the generality of this section, circumstances giving rise to such an inference might include—
  - (a) the convenience of managing the properties together because they share—

- (i) some common feature, or
    - (ii) an obligation for common maintenance of some facility,
  - (b) there being shared rights to common property,
  - (c) the properties being subject to the common scheme by virtue of the same deed of conditions, or
  - (d) the properties each being a flat in the same tenement.
- (4) This section confers no right of pre-emption, redemption or reversion.

### **32 Conversion where expressly enforceable by certain third parties**

Where a qualifying condition is expressed as being enforceable by—

- (a) the owner, or
- (b) the tenant,

of land other than the qualifying land then, on the appointed day, such condition becomes a real burden in relation to which the qualifying land is the burdened property and that other land is a benefited property.

#### *Exclusions from conversion*

### **33 Qualifying condition where obligation assumed by public authority**

Sections 29(1) and 31(1) do not apply to a qualifying condition in so far as such condition constitutes an obligation—

- (a) to maintain or reinstate, and
- (b) which has been assumed—
  - (i) by a local or other public authority, or
  - (ii) by virtue of any enactment, by a successor body to any such authority.

#### *Effect of conversion on counter-obligations*

### **34 Counter-obligations on conversion**

- (1) Where a qualifying condition becomes, by virtue of any of sections 14 to 32, a real burden, the right to enforce the burden is subject to any counter-obligation mentioned in subsection (2).
- (2) The counter-obligations are—
  - (a) in the case of a real burden constituted by virtue of—
    - (i) section 14 or 23 to 28, those specified in the notice registered under the section in question,
    - (ii) section 17, those specified in the agreement,
    - (iii) section 30, those enforceable against the person on whom power is conferred,
    - (iv) section 32, those enforceable against the owner or (as the case may be) tenant of the other land, and
  - (b) in any other case, those enforceable against any person who immediately before the appointed day was entitled to enforce the qualifying condition which was converted into the burden.

### *Prescription*

#### **35 Prescriptive period for converted conditions**

- (1) This section applies where a qualifying condition becomes, by virtue of any of sections 14 to 32, a real burden.
- (2) Section 18(5) of the 2003 Act (prescription where breach of burden occurs before the appointed day) applies to any breach of the qualifying condition as it applies to a breach of a real burden.

### *Notices and agreements under this Part*

#### **36 Further provision for notices and agreements**

- (1) Subsections (2) and (3) apply in relation to a qualifying lease where—
  - (a) an agreement relating to a qualifying condition has been registered under section 17, or
  - (b) a notice relating to a qualifying condition has been registered under section 14 or 23 to 28.
- (2) It is not competent for the person who registered the agreement or notice (or that person's successor) to register under any of those sections in relation to the qualifying lease another such agreement or notice relating to the same qualifying condition.
- (3) Nothing in subsection (2) prevents registration of an agreement or notice where (as the case may be)—
  - (a) the discharge of any earlier such agreement has been registered, jointly, by the parties to that agreement (or by their successors), or
  - (b) the discharge of any earlier such notice has been registered by the person who registered that notice (or by that person's successor).
- (4) Where more than one qualifying lease is affected by the same qualifying condition enforceable by the same person, that person must, if that person wishes to execute and register a notice under this Part in relation to those qualifying leases in respect of that qualifying condition, do so in relation to each separately.
- (5) Where a qualifying lease is affected by more than one qualifying condition enforceable by the same person, that person may—
  - (a) enter into and register a single agreement under section 17 in relation to that qualifying lease in respect of those qualifying conditions, or
  - (b) execute and register a single notice under section 14 or 23 to 28 in relation to that qualifying lease in respect of those qualifying conditions.
- (6) Nothing in this Part requires registration against land prospectively nominated as a benefited property but outwith Scotland.