



Abolition of Feudal Tenure etc. (Scotland) Act 2000

2000 asp 5

PART 4

REAL BURDENS

Conservation burdens

26 Conservation bodies

- (1) For the purposes of this Part of this Act, the Scottish Ministers may, subject to subsection (2) below, by regulations, prescribe such body (if any) as they think fit to be a conservation body.
- (2) The power conferred by subsection (1) above may be exercised in relation to a body only if the object, or function, of the body (or, as the case may be, one of its objects or functions) is to preserve, or protect, for the benefit of the public—
 - (a) the architectural or historical characteristics of any land; or
 - (b) any other special characteristics of any land (including, without prejudice to the generality of this paragraph, a special characteristic derived from the flora, fauna or general appearance of any land).
- (3) Where the power conferred by subsection (1) above is exercised in relation to a trust, the conservation body shall be the trustees of the trust.
- (4) The Scottish Ministers may, by regulations, prescribe that such conservation body as may be specified in the regulations shall cease to be a conservation body.

27 Notice preserving right to enforce conservation burden

- (1) Where a conservation body has, or the Scottish Ministers have, the right as superior to enforce a real burden of the class described in subsection (2) below or would have that right were it or they to complete title to the *dominium directum*, it or they may, before the appointed day, preserve for the benefit of the public the right to enforce the burden in question after that day by executing and registering against the *dominium*

utile of the land subject to the burden a notice in, or as nearly as may be in, the form contained in schedule 8 to this Act; and any burden as respects which such a right is so preserved shall, on and after the appointed day, be known as a “conservation burden”.

- (2) The class is those real burdens which are enforceable against a feudal estate of *dominium utile* of land for the purpose of preserving, or protecting—
- (a) the architectural or historical characteristics of the land; or
 - (b) any other special characteristics of the 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 shall—
- (a) state that the superior is a conservation body by virtue of section 26 of this Act or that the superior is the Scottish Ministers;
 - (b) set out the title of the superior;
 - (c) describe, sufficiently to enable identification by reference to the Ordnance Map, the land subject to the real burden (or any part of that land);
 - (d) set out the terms of the real burden; and
 - (e) set out the terms of any counter-obligation to the real burden if it is a counter-obligation enforceable against the superior.
- (4) This section is subject to sections 41 and 42 of this Act.

28 Enforcement of conservation burden

- (1) Subject to section 31 of this Act, if a notice has been executed and registered in accordance with section 27 of this Act and, immediately before the appointed day, the burden to which the notice relates is still enforceable by the conservation body or the Scottish Ministers as superior or would be so enforceable, or still so enforceable, were the body in question or they to complete title to the *dominium directum* then, on and after the appointed day, the conservation body or as the case may be the Scottish Ministers shall—
- (a) subject to any counter-obligation, have title to enforce the burden against the land to which the notice in question relates; and
 - (b) be presumed to have an interest to enforce that burden.
- (2) The references in subsection (1) above 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 superior;
 - (b) the Scottish Ministers include references to a conservation body which is their successor as superior.

29 Assignment of right to conservation burden

The right to a conservation burden may be assigned or otherwise transferred to any conservation body or to the Scottish Ministers; and any such assignation or transfer shall take effect on registration.

30 Deduction of title for conservation burden

Where a conservation body does not, or the Scottish Ministers do not, have a completed title to a conservation burden, the body, or as the case may be the Ministers, may—

- (a) in any assignation, or transfer, under section 29 of this Act, deduce title to the conservation burden through the midcouples linking it or them to the conservation body having the last completed title; or
- (b) complete title to the burden by registering a notice of title.

31 Extinction of burden on body ceasing to be conservation body

If, immediately before ceasing to be a conservation body (whether because regulations under section 26(4) of this Act so provide or because the body has ceased to exist), a body was entitled to enforce a conservation burden, then, on the body so ceasing, that burden shall forthwith be extinguished.

32 No standard security over conservation burden

In section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) (the standard security), after subsection (2) insert—

- “(2A) It shall not be competent to grant a standard security over a conservation burden (within the meaning of Part 4 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)).”.