

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Real Burdens: Miscellaneous

Section 63: Manager burdens

280. **Section 63** identifies a new category of real burden known as a manager burden. The category is new, but the burden itself is already familiar from current practice, and the section applies to existing real burdens as well as to those created after the section comes into force the day after Royal Assent (section 129(3)). A manager burden is typically used by a developer to appoint a manager in the initial years of a housing or other development. It stipulates who has the power to appoint or to act as the manager for the scheme and to administer and enforce the burdens imposed. This section confirms that this is a valid burden, and provides rules as to how it should operate.
281. **Subsection (1)** defines a ‘manager burden’ as one which confers the power to act as, or to appoint or dismiss, a manager. ‘Related properties’ is defined in section 66. Subsection (1) is a qualification of the rule, stated in section 3(7), that a real burden must not have the effect of creating a monopoly. The meaning of ‘manager’ is given in section 122(1). This section applies to both existing and new burdens. If an existing burden provides for the nomination of a manager in perpetuity, it will become subject to the limitations in subsections (2) and (4).
282. The duration of a manager burden is specified in subsections (4) and (5). But even during those time periods, the power cannot be exercised unless its holder owns at least one of the properties being managed. This is provided by **subsection (2)**. In some manager burdens the power to appoint may be tied to one of the properties in particular. Much more usually, however, the power will be conferred on a person without any reference to a benefited property. This is because typically developers will not know which of the properties on the estate will be the last to be sold. These manager burdens resemble other personal real burdens such as conservation burdens in that they are in favour of a person. But unlike conservation and maritime burdens, the benefited proprietor must still own a property within the scheme: it is just that no one unit need be singled out as benefiting from the manager burden. As a result the effect of subsection (2) is to provide what is virtually a floating benefited property. As with other personal real burdens there is a presumed right to enforce (section 47).
283. **Subsection (3)** makes clear that the holder of a manager burden may assign their right. Registration is not required, but there must be intimation to the owners of the rest of the scheme.
284. The normal rule under **subsections (4) and (5)** is that a manager burden comes to an end after five years but this is reduced to three years for sheltered or retirement housing. It would be possible to provide for a shorter period in the constitutive deed. Paragraph (a) of subsection (5) provides for a special period of thirty years for local authority housing.

*These notes relate to the Title Conditions (Scotland) Act
2003 (asp 9) which received Royal Assent on 3 April 2003*

285. *Subsection (6)* allows a duration of thirty years where the burden was imposed in a sale under the right-to-buy legislation for council houses.
286. *Subsection (7)* describes how the period of a manager burden is to be calculated. Where the manager burden is created in a deed of conditions affecting all of the related properties, the manager burden will be extinguished for all of them on the same day, three, five or thirty years after registration of the deed of conditions. If, however, the manager burden is created in a series of dispositions containing the same burdens, the duration of the burden will be calculated from the registration date of the first constitutive deed that created a manager burden in respect of one of those related properties, i.e. the first sale.
287. *Subsection (8)* prevents dismissal of the manager under the dismissal provisions in section 28, or for any other than right to buy properties, in section 64 of the Act as long as a manager burden is in operation. The note on section 64 explains the exception for right to buy properties. In theory the titles might confer an independent power of dismissal on the owners of the managed properties.
288. *Subsection (9)* makes clear that a manager burden imposed in a grant in feu is not extinguished with the abolition of the feudal system. Instead it will be extinguished in accordance with subsection (4); and until that occurs the former superior will be able to exercise the power under the burden.