Title Conditions (Scotland) Act 2003

2003 asp 9

PART 7

SERVITUDES

Positive servitudes

75 Creation of positive servitude by writing: deed to be registered

(1) A deed is not effective to create a positive servitude by express provision unless it is registered against both the benefited property and the burdened property.

(2) It shall be no objection to the validity of a positive servitude that, at the time when the deed was registered as mentioned in subsection (1) above, the same person owned the benefited property and the burdened property; but[F1]... the servitude shall not be created while that person remains owner of both those properties.

(3) Subsection (1) above—

(a) is subject to section 3(1) of the Prescription and Limitation (Scotland) Act 1973 (c. 52) (creation of positive servitude by 20 years' possession following execution of deed); and

(b) does not apply to servitudes such as are mentioned in section 77(1) of this Act.

Textual Amendments

F1 Words in s. 75(2) repealed (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **sch. 5 para. 43(8)** (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

Modifications etc. (not altering text)

C1 S. 75 excluded (24.7.2006) by Waverley Railway (Scotland) Act 2006 (asp 13), **s. 44(2)** (with ss. 50(2), 51)

C2 S. 75 excluded (15.1.2007) by Glasgow Airport Rail Link Act 2007 (asp 1), **s. 42(2)** (with s. 50)

C3 S. 75 excluded (19.4.2007) by Edinburgh Airport Rail Link Act 2007 (asp 16), **s. 55(2)** (with ss. 52, 60)

C4 S. 75 excluded (8.5.2007) by Airdrie-Bathgate Railway and Linked Improvements Act 2007 (asp 19), **ss. 37(2)**, 54(2) (with ss. 48, 59)

C5 S. 75 excluded (1.6.2010) by The Network Rail (Waverley Steps) Order 2010 (S.S.I. 2010/188), **art. 31(3)**

C6 S. 75 excluded (11.4.2017) by The Network Rail (Glasgow Queen Street Station) Order 2017 (S.S.I. 2017/100), arts. 1, **33(2)** (with art. 37)

C7 S. 75(1) excluded (3.2.2011) by Forth Crossing Act 2011 (asp 2), **ss. 27(2)**, 80(2) (with ss. 69, 78); S.S.I. 2011/38, art. 2, sch.

76 Disapplication of requirement that positive servitude created in writing be of a known type

(1) Any rule of law that requires that a positive servitude be of a type known to the law shall not apply in relation to any servitude created in accordance with section 75(1) of this Act.

(2) Nothing in subsection (1) above permits the creation of a servitude that is repugnant with ownership.

77 Positive servitude of leading pipes etc. over or under land

(1) A right to lead a pipe, cable, wire or other such enclosed unit over or under land for any purpose may be constituted as a positive servitude.

(2) It shall be deemed always to have been competent to constitute a right such as is mentioned in subsection (1) above as a servitude.

78 Discharge of positive servitude

A positive servitude—

(a) which has been registered against the burdened property; or

(b) which has been noted in, or otherwise appears in, the title sheet of that property,

is discharged by deed only on registration of the deed against the burdened property.

Negative servitudes

79 Prohibition on creation of negative servitude

On the appointed day it shall cease to be competent to create a negative servitude.

Transitional

80 Negative servitudes to become real burdens

(1) A negative servitude shall, on the appointed day, cease to exist as such but shall forthwith become a real burden (such a real burden being, for the purposes of this section, referred to as a “converted servitude”).

(2) Subject to subsections (3) and (4) below, a converted servitude shall be extinguished on the expiry of the period of ten years beginning with the appointed day.

(3) If, before the appointed day, a negative servitude was registered against the burdened property or was noted in, or otherwise appeared in, the title sheet of that property the converted servitude shall not be extinguished as mentioned in subsection (2) above.

(4) If, during the period mentioned in subsection (2) above, an owner of the benefited property executes and duly registers, in (or as nearly as may be in) the form contained in schedule 9 to this Act, a notice of converted servitude, the converted servitude shall not be extinguished as mentioned in subsection (2) above (in so far as the burdened property, the benefited property and the converted servitude are, respectively, the burdened property, the benefited property, and the converted servitude identified in the notice of converted servitude).

(5) The notice of converted servitude shall—

(a) identify the land which is the burdened property (or any part of that land);

(b) identify the land which is the benefited property (or any part of that land);

(c) where the person registering the notice does not have a completed title to the benefited property, set out the midcouples linking that person to the person who last had such completed title;

(d) set out the terms of the converted servitude;

(e) include as an annexation the constitutive deed, if any (or a copy of such deed); and

(f) if the land identified for the purposes of paragraph (b) above is not nominated in the constitutive deed, set out the grounds, both factual and legal, for describing that land as a benefited property.

(6) For the purposes of subsection (4) above, a notice is, subject to section 116 of this Act, duly registered only when registered against both properties identified in pursuance of subsection (5)(a) and (b) above.

(7) Subsections (4) and (5) of section 50 of this Act shall apply in respect of a notice of converted servitude as they apply in respect of a notice of preservation.

(8) This section is subject to section 115 of this Act.

81 Certain real burdens to become positive servitudes

(1) A real burden consisting of a right to enter, or otherwise make use of, the burdened property shall, on the appointed day, cease to exist as such but shall forthwith become a positive servitude.

(2) Subsection (1) above—

(a) is subject to section 17(1) of the 2000 Act (extinction on appointed day of certain rights of superior);

(b) does not apply to real burdens such as are mentioned in section 2(3)(a) of this Act.

Changes to legislation:
There are currently no known outstanding effects for the Title Conditions (Scotland) Act 2003, Part 7.