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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes modifications of the following enactments which appear to be necessary or expedient in consequence of the [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#) (“the 2003 Act”).

### **Lands Clauses Consolidation (Scotland) Act 1845**

Schedule A to this Act contains a form of “statutory conveyance” which may be used in compulsory purchase procedure. Section 107 of the 2003 Act allows certain burdens etc to be saved if they are referred to in the conveyance. The amendment provides a prompt about this in the form of conveyance.

### **Abolition of Feudal Tenure etc (Scotland) Act 2000**

The words at the end of section 20(3) are omitted so that the savings provisions of section 17 will have effect even if the burden is not successfully reallocated under section 20.

The amendment of section 20(7) provides for an order by the Lands Tribunal refusing an application to save a feudal real burden. The effect of such an order is that the transitional period, which prolongs the superior’s right to enforce the burden, is prevented from operating, if the order is registered before the appointed day, or is brought to an end, if the order is registered on or after the appointed day.

Section 32 is omitted from the commencement provisions as it was repealed by the 2003 Act.

### **Title Conditions (Scotland) Act 2003**

The amendment to section 37(2)(b) allows burdens to be identified by reference to a deed recorded in the Register of Sasines or registered in the Land Register of Scotland rather than set out at length.

In section 90(6), although compensation is potentially available to a benefited proprietor if there is only a partial renewal of the burden, the Lands Tribunal order in such a case would be partially discharging not renewing the burden. The reference to “renewing” is therefore removed. Compensation may be available under section 90(6) when a title conditions is varied. The additional reference to “variation” of a title condition in subsection (7) of section 90 is to make subsection (7) consistent with subsection (6).

Section 90(8A) allows an order of the Lands Tribunal to impose new burdens, as provided in section 73(2), when a development management scheme is disappplied. There are consequential amendments to sections 4(7) to confirm that burdens can be created in this way and 104(3) which provides for the registration of such orders. The amendment of section 99(4)(a) adds grounds for rejecting the disapplication of a development management scheme on the basis of the burdens imposed by the deed of disapplication.

Section 93 provides that the Lands Tribunal has to notify certain applications to the holder of the title condition i.e. the person who has right to it. The amendment of section 122(1) changes the definition of “holder” to make clear that this does not include the persons entitled to enforce a burden under section 8(2)(a), (b) or (c) such as tenants, liferenters and non-entitled spouses.

The amendment of section 106 is a saving provision which means that section 106 will only affect compulsory purchase orders which have not already reached the procedural stage of having been notified as required under the previous law.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

The amendment of section 109 supplements the changes made by the Act to the procedures for giving notice to benefited proprietors and holders of personal real burdens on compulsory purchase. The new subsections (4A) and (4B) inserted into section 109 provide that notices to be served on the holders of personal real burdens and benefited proprietors following confirmation of a compulsory purchase order are to be served in the same manner as the notices of making of a compulsory purchase order. The amendment to a new sub-paragraph 3A(c) to the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 inserted by section 109 removes the requirement to affix a conspicuous notice to the burdened property. Paragraph 14 makes the same changes to the amendments made to the Forestry Act 1967 by section 110.

#### **The Housing (Forms) (Scotland) Regulations 1974**

Paragraph 16 of Part II of the Schedule make changes to forms of compulsory purchase order and notices set out in the Regulations. The changes are as a consequence of changes to compulsory purchase procedure and reflect the amendment made to the notification requirements set out in paragraph 3 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 by section 109 of the 2003 Act.

#### **The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984**

Paragraph 17 of Part II of the Schedule amends the Town and Country Planning (Control of Advertisement) (Scotland) Regulations 1984 to add notices affixed to lampposts pursuant to the 2003 Act to the classes of advertisements which are deemed under regulation 10 to have consent for their display. Notices may be affixed to lampposts under sections 21(2)(b), 36(2)(b) or 107(8)(c) of the 2003 Act and under paragraph 3A(c) of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and paragraph 2(1B)(c) of Schedule 5 to the Forestry Act 1967. These Acts were amended by sections 109 and 110 respectively of the 2003 Act. Paragraph 17 also amends regulation 6 to bring the standard conditions set out in Schedule 1 to the Regulations in line with the provisions of the 2003 Act.

#### **The Compulsory Purchase by Public Authorities (Inquiries Procedure) (Scotland) Rules 1998**

Paragraph 18 of Part II of the Schedule amends the Compulsory Purchase by Public Authorities (Inquiries Procedure)(Scotland) Rules 1998 to change the definition of statutory objector to bring this in line with the class of persons to be notified of a compulsory purchase order following the changes made to the notification procedure by section 109 of the 2003 Act.