

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Miscellaneous

Section 106: Extinction of real burdens and servitudes etc. on compulsory acquisition of land

408. This is the first of a group of provisions (sections 106, 107, 109 and 110) which are concerned with the effect of compulsory purchase on real burdens and servitudes. *Section 106* deals with the effect of a compulsory purchase order on real burdens and servitudes affecting the land acquired. Section 107 is concerned with the effect of an acquisition by agreement.
409. The effect of compulsory purchase on real burdens and servitudes is disputed under the current law. Section 106 provides a clear rule. In general (subsection (1)), all real burdens and servitudes are extinguished on registration of the conveyance (defined in subsection (5)). This applies to any conveyance which is registered on or after the appointed day, regardless of the date of the compulsory purchase order but not to a conveyance registered before the appointed day (section 119(9)). The term conveyance includes, but is not limited to, a statutory conveyance in the form set out in schedule A to the Lands Clauses Consolidation (Scotland) Act 1845 and a general vesting declaration made under the Town and Country Planning (Scotland) Act 1997.
410. A conveyance registered under subsection (1) would have the effect of disapplying a development management scheme which applied to the land. As with real burdens it is possible for either the compulsory purchase order or the conveyance to modify this extinctive effect.
411. *Section 106* will only apply to compulsory acquisition authorised by a compulsory purchase order. “Compulsory purchase order” is defined by subsection (5). It includes both an compulsory purchase order made under section 1(1) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and also a compulsory purchase order made under the Forestry Act 1967.
412. Subsections (1) and (2) together allow the acquiring authority to disapply the extinctive effect of section 106(1) and to save or vary the burdens. It is in terms of subsection (1) possible for this to be done either by provision in a compulsory purchase order or in the conveyance (as defined in subsection 106(5)). It is possible in terms of subsection (2) to disapply section 106(1) for certain burdens only, or for parts of the burdened property only or in respect of the rights of certain benefited proprietors to enforce the burdens
413. It is not a necessary pre-requisite for the inclusion in the subsequent conveyance that a provision has been included in the compulsory purchase order to disapply section 106(1). The conveyance would not in terms of subsection (3), without the consent of the benefited proprietors, be registrable and so would not extinguish burdens under section 106(1) if section 106 had been disappplied in the compulsory purchase order.

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

414. Subsection (4) makes provision for compensation to be paid to the holders of personal real burdens extinguished under subsection (1). Compensation may be payable to the owner of a benefited property where a burden is extinguished but this is provided for not under the Act but rather under other rules of land compensation.
415. Subsection (5) gives a wide definition of “conveyance”. A conveyance includes both the familiar “schedule A” conveyance (or “statutory conveyance”) and general vesting declaration. In addition it includes an ordinary disposition which includes a reference to the application of section 106(1), or if the conveyance follows on an acquisition by agreement a reference to the application of section 107(1) - see the definition of conveyance in section 107(10). The effect of paragraph (a)(i) is that it will cease to be necessary to use a “statutory conveyance”, though such use will remain competent in order to extinguish real burdens. However, such a disposition etc is not in other respects the equivalent of a statutory conveyance.