

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Development Management Scheme

Section 71: Development management scheme

302. *Subsection (1)* of *section 71* allows the owner or owners of land to apply the Development Management Scheme to that land. The Development Management Scheme is applied by the registration of a deed of application. The Scheme only applies if a deed of application is registered: it has no automatic application. There is no special form of deed of application. It must be granted by the owner of the property in question. “Owner” includes a person who has right to the property but has not completed title by registration (section 123(1)(a), but (section 60 applied by section 72) there then must, unless the land is already registered on the Land Register, be a deduction of title. An owner “grants” a deed by subscribing it in accordance with section 2 of the Requirements of Writing (Scotland) Act 1995, and in practice the deed will also be witnessed under section 3 of that Act. The Scheme takes effect, either immediately on registration, or on a date identified in terms of paragraph (a) or (b). This follows the pattern of section 4(1). The Scheme is defined in subsection (3). The Scheme is to be set out in an order made under section 104 of the Scotland Act 1998. Insofar as that order permits the Scheme may be applied with variations to a particular development. All the rules of the Scheme for any particular development will therefore be set out in the order or in the deed of application itself. For ease of reference and drafting the rules set out in the order may be repeated in full in the deed of application. Variations to the rules set out in the order may include additional rules as well as changes (to the extent permitted) to the rules in the order.
303. *Subsection (2)* requires the deed of application to include certain information. The deed of application must describe the development, define Scheme property and unit for the purposes of the particular Scheme and give the name of the owners association to be established by the Scheme. The name of the owners association must begin or end with the words “Owners Association” in order to ensure that any party dealing with the body can be made aware of its status. The deed of application must also name the first manager of the owners association.
304. *Subsection (3)* defines the Development Management Scheme by reference to the order to be made under the Scotland Act 1998. The definition also takes account of the fact that the Scheme is likely to be applied with variations to any particular development with the result that there may be many different versions of the Scheme. While, therefore, it is only possible to apply the Scheme set out in the order (with variations), once applied each different version of the Scheme is included within the definition of the Development Management Scheme. The need for this distinction is clear from section 73 which makes provision for the particular Scheme applied to a development to be disapplied.