

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Powers of the Lands Tribunal

Section 97: Granting unopposed application for discharge or renewal of real burden

391. Under the existing law, all applications must be considered on their merits, whether opposed or not. *Section 97* provides a new procedure for certain applications to the Lands Tribunal if not opposed. Unopposed applications for the discharge, variation, renewal or preservation of certain real burdens (only) are to be granted without further inquiry. The Tribunal will retain a role in receiving the application, notifying the appropriate owners, checking that it had been properly made, checking that it does not relate to an excepted type of burden such as are described in subsection (2) and granting the appropriate order. It is not competent to award compensation in a case where a burden is being discharged unopposed or to impose a substitute real burden. Where the burden is being renewed or preserved there is no need for such an award or substitution.
392. Under the current law, the Tribunal can only grant an order to vary or discharge a burden if it is satisfied that the statutory grounds are satisfied, even if an application is unopposed. *Subsection (1)* provides that if an application is not opposed and does not relate to an excepted type of burden, the Tribunal *must* grant it, and makes clear that no ancillary orders under section 90(6)(a) or (8) (for compensation or a replacement title condition) may be made where an application for discharge or variation under section 90(1)(a) or 91(1) is unopposed. An application is ‘duly made’ if it complies with section 90 (or section 91). The reference in paragraph (b) to a renewal or variation is to a renewal application under the sunset rule in section 20 (an application under section 90(1)(b)(i)), or in response to notification of a proposal to register a section 107 conveyance (an application under section 90(1)(b)(ii)). The reference in paragraph (c) to preservation is to an application under section 90(1)(c) to preserve a community burdens in response to notification of a proposal to register a deed of variation or discharge under section 34(3) or 37(1).
393. *Subsection (2)* excepts facility and service burdens (defined in section 122). *Subsection (2)* also excepts an application made under section 91 (i.e. by the owners of 25% or more of the units in a community) if that application relates to a burden imposed on a sheltered or retirement housing development.
394. *Subsection (3)* explains what is meant by ‘unopposed’. Representations must comply with section 96. Only representations by owners of benefited properties or holders of a personal real burden would be treated as opposition to an application for discharge. Only representations by the terminator or the acquiring authority (i.e. the person proposing to register the conveyance) would be treated as opposition to an application for renewal and only representations by the person proposing to register a deed of variation or discharge under sections 33 or 35 would be treated as opposition to an application for preservation under section 91(1)(c). A representation accepted late under

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

section 96(3) would qualify as opposition. An application would count as unopposed if representations were subsequently withdrawn.

395. Expenses, for the most part, are dealt with in section 103. The purpose of *subsection (4)* is to allow the Tribunal to award expenses against a terminator or person seeking to register a discharge under sections 33 or 35 or conveyance under section 107 who does not oppose an application for renewal or preservation made under section 90(1)(b) or (c). Such a person is not a party to the application, but their actions have resulted in the benefited proprietor making the application for renewal or preservation. The subsection operates to stop such a person avoiding an award of expenses by failing to become a party to the application: the Tribunal will have a discretion to award expenses against them.