



# Title Conditions (Scotland) Act 2003

## 2003 asp 9

### PART 1

#### REAL BURDENS: GENERAL

##### *Termination*

#### **20 Notice of termination**

- (1) Subject to section 23 of this Act, if at least one hundred years have elapsed since the date of registration of the constitutive deed (whether or not the real burden has been varied or renewed since that date), an owner of the burdened property, or any other person against whom the burden is enforceable, may, after intimation under section 21(1) of this Act, execute and register, in (or as nearly as may be in) the form contained in schedule 2 to this Act, a notice of termination as respects the real burden.
- (2) It shall be no objection to the validity of a notice of termination that it is executed or registered by a successor in title of the person who has given such intimation; and any reference in this Act to the “terminator” shall be construed as a reference to—
  - (a) except where paragraph (b) below applies, the person who has given such intimation; or
  - (b) where that person no longer has the right or obligation by virtue of which intimation was given, the person who has most recently acquired that right or obligation.
- (3) Subsections (1) and (2) above do not apply in relation to—
  - (a) a conservation burden;
  - (b) a maritime burden;
  - (c) a facility burden;
  - (d) a service burden; or
  - (e) a real burden which is a title condition of a kind specified in schedule 11 to this Act.
- (4) The notice of termination shall—
  - (a) identify the land which is the burdened property;

- (b) describe the terminator’s connection with the property (as for example by identifying the terminator as an owner or as a tenant);
  - (c) set out the terms of the real burden and (if it is not wholly to be terminated) specify the extent of the termination;
  - (d) specify a date on or before which any application under paragraph (b) of section 90(1) of this Act will require to be made if the real burden is to be renewed or varied under that paragraph (that date being referred to in this Act as the “renewal date”);
  - (e) specify the date on which, and the means by which, intimation was given under subsection (1) of section 21 of this Act; and
  - (f) set out the name (in so far as known) and the address of each person to whom intimation is sent under subsection (2)(a) of that section.
- (5) Any date may be specified under paragraph (d) of subsection (4) above provided that it is a date not less than eight weeks after intimation is last given under subsection (1) of the said section 21 (intimation by affixing being taken, for the purposes of this subsection, to be given when first the notice is affixed).
- (6) Where a property is subject to two or more real burdens, it shall be competent to execute and register a single notice of termination in respect of both (or all) the real burdens.

## 21 Intimation

- (1) A proposal to execute and register a notice of termination shall be intimated—
- (a) to the owner of each benefited property;
  - (b) in the case of a personal real burden, to the holder; and
  - (c) to the owner (or, if the terminator is an owner, to any other owner) of the burdened property.
- (2) Subject to subsection (3) below, such intimation may be given—
- (a) by sending a copy of the proposed notice of termination, completed as respects all the matters which must, in pursuance of paragraphs (a) to (d) and (f) of section 20(4) of this Act, be identified, described, set out or specified in the notice and with the explanatory note which immediately follows the form of notice of termination in schedule 2 to this Act;
  - (b) by affixing to the burdened property and to—
    - (i) in a case (not being one mentioned in paragraph (c)(ii) below) where there exists one, and only one, lamp post which is situated within one hundred metres of that property, that lamp post; or
    - (ii) in a case (not being one so mentioned) where there exists more than one lamp post so situated, each of at least two such lamp posts,
 a conspicuous notice in the form set out in schedule 3 to this Act; or
  - (c) in a case where—
    - (i) it is not possible to comply with paragraph (b) above; or
    - (ii) the burdened property is minerals or salmon fishings,
 by advertisement in a newspaper circulating in the area of the burdened property.
- (3) Such intimation shall, except where it is impossible to do so, be given by the means described in subsection (2)(a) above if it is given—

- (a) under subsection (1)(b) or (c) above; or
  - (b) under subsection (1)(a) above in relation to a benefited property which is at some point within four metres of the burdened property.
- (4) An advertisement giving intimation under subsection (2)(c) above shall—
- (a) identify the land which is the burdened property;
  - (b) set out the terms of the real burden either in full or by reference to the constitutive deed;
  - (c) specify the name and address of a person from whom a copy of the proposed notice of termination may be obtained; and
  - (d) state that any owner of a benefited property, or as the case may be any holder of a personal real burden, may apply to the Lands Tribunal for Scotland for the real burden to be renewed or varied but that if no such application is received by a specified date (being the renewal date) the consequence may be that the real burden is extinguished.
- (5) The terminator shall provide a person with a copy of the proposed notice of termination (completed as is mentioned in subsection (2)(a) above and with the explanatory note referred to in that subsection) if so requested by that person.
- (6) A person—
- (a) is entitled to affix a notice to a lamp post in compliance with subsection (2)(b) above regardless of who owns the lamp post but must—
    - (i) take all reasonable care not to damage the lamp post in doing so; and
    - (ii) remove the notice no later than one week after the date specified in it as the renewal date; and
  - (b) must, until the day immediately following the date so specified, take all reasonable steps to ensure that the notice continues to be displayed and remains conspicuous and readily legible.
- (7) Section 184 of the Town and Country Planning (Scotland) Act 1997 (c. 8) (planning permission not needed for advertisements complying with regulations) applies in relation to a notice affixed in compliance with subsection (2)(b) above as that section applies in relation to an advertisement displayed in accordance with regulations made under section 182 of that Act (regulations controlling display of advertisements).

## **22 Oath or affirmation before notary public**

- (1) Before submitting a notice of termination for registration, the terminator shall swear or affirm before a notary public that, to the best of the terminator's knowledge and belief, all the information contained in the notice is true and that section 21 of this Act has been complied with.
- (2) For the purposes of subsection (1) above, if the terminator is—
- (a) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in that subsection, then a legal representative of the terminator may swear or affirm;
  - (b) not an individual, then any person authorised to sign documents on its behalf may swear or affirm;
- and any reference in that subsection to a terminator shall be construed accordingly.

## **23 Prerequisite certificate for registration of notice of termination**

- (1) A notice of termination shall not be registrable unless, after the renewal date, there is endorsed on the notice (or on an annexation to it referred to in an endorsement on it and identified, on the face of the annexation, as being the annexation so referred to) a certificate executed by a member of the Lands Tribunal, or by their clerk, to the effect that no application in relation to the proposal to execute and register the notice has been received under section 90(1)(b) (and (4)) of this Act or that any such application which has been received—
- (a) has been withdrawn; or
  - (b) relates (either or both)—
    - (i) to one or more but not to all of the real burdens the terms of which are set out in the notice (any real burden to which it relates being described in the certificate);
    - (ii) to one or more but not to all (or probably or possibly not to all) of the benefited properties (any benefited property to which it relates being described in the certificate),and where more than one such application has been received the certificate shall relate to both (or as the case may be all) applications.
- (2) At any time before endorsement under subsection (1) above, a notice of termination, whether or not it has been submitted for such endorsement, may be withdrawn, by intimation in writing to the Lands Tribunal, by the terminator; and it shall not be competent to endorse under that subsection a notice in respect of which such intimation is given.

## **24 Effect of registration of notice of termination**

- (1) Subject to subsection (2) below, a notice of termination, when registered against the burdened property, extinguishes the real burden in question wholly or as the case may be to such extent as may be described in that notice.
- (2) A notice of termination registrable by virtue of a certificate under paragraph (b) of section 23(1) of this Act shall not, on being registered, extinguish a real burden which is the subject of an application disclosed by the certificate in so far as that burden—
- (a) is constituted in favour of the property of which the applicant is owner; or
  - (b) is a personal real burden of which the applicant is holder,
- but if under that section a further certificate is endorsed on the notice (or on an annexation to the notice) the notice may be registered again, the effect of the later registration being determined by reference to the further certificate rather than to the certificate by virtue of which the notice was previously registered.