



Title Conditions (Scotland) Act 2003

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PART 2

COMMUNITY BURDENS

Variation, discharge etc.

32 The expressions “affected unit” and “adjacent unit”

In this Part of this Act a unit in respect of which a community burden is to be varied (“varied” including imposed), or discharged, is referred to as an “affected unit”; and “adjacent unit” means, in relation to an affected unit, any unit which is at some point within four metres of the unit.

33 Majority etc. variation and discharge of community burdens

- (1) A community burden may be varied (“varied” including imposed), or discharged, by registering against each affected unit a deed of variation, or discharge, granted—
 - (a) where provision is made in the constitutive deed for it to be granted by the owners of such units in the community as may be specified, by or on behalf of the owners of those units; or
 - (b) where no such provision is made, in accordance with subsection (2) below.
- (2) A deed is granted in accordance with this subsection if granted—
 - (a) by or on behalf of the owners of a majority of the units in the community (except that, where one person owns a majority of those units, the deed must also be granted by at least one other owner); or
 - (b) where the manager of the community is authorised to do so (whether in the constitutive deed or otherwise), by that manager.
- (3) An affected unit may, for the purposes of subsection (1)(a) or (2)(a) above, be included in any calculation of the number of units.
- (4) For the purposes of this section, where a unit is owned by two or more persons in common a deed is granted by or on behalf of the owners of the unit if—

Status: This is the original version (as it was originally enacted).

- (a) granted in accordance with such provision as is made in that regard in the constitutive deed; or
- (b) where no such provision is made, granted by or on behalf of those of them who together own more than a half share of the unit.

(5) This section is subject to section 54(5)(b) and (c) of this Act.

34 Variation or discharge under section 33: intimation

- (1) Where a deed of variation or discharge is granted under section 33(2) of this Act, a proposal to register that deed shall be intimated to such other owners of the units in the community as have not granted the deed.
- (2) Such intimation shall be given by sending a copy of the deed, together with—
 - (a) a notice in, or as near as may be in, the form set out in schedule 4 to this Act; and
 - (b) the explanatory note which immediately follows that form in that schedule.
- (3) Where a deed has been granted as mentioned in subsection (1) above, any person to whom intimation is given under subsection (2) above may, during the period of eight weeks beginning with the latest date on which intimation of the proposal to register the deed is so given, apply to the Lands Tribunal for preservation, unvaried, of the community burden in so far as constituted in favour of, or against, any unit not all of whose owners have granted the deed.
- (4) Subsections (2) to (4) of section 37 of this Act apply to a deed granted as mentioned in subsection (1) above as they apply in relation to a deed granted as mentioned in section 35 of this Act but with the modifications specified in subsection (5) below.
- (5) The modifications are that—
 - (a) references in the said subsections (2) and (4) to subsection (1) of that section are to be construed as references to subsection (3) above;
 - (b) the reference in the former of those said subsections to no application having been received under section 37 is to be construed as a reference to none having been received under this section; and
 - (c) the reference in the latter of those said subsections to section 36 of this Act is to be construed as a reference to subsections (1) and (2) above.
- (6) For the purposes of subsection (4) of section 37 of this Act as so applied, if the person proposing to submit for registration a deed granted as mentioned in subsection (1) above is—
 - (a) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in the said subsection (4), then a legal representative of that person 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 the said subsection (4) to the person so proposing shall be construed accordingly.

35 Variation and discharge of community burdens by owners of adjacent units

- (1) A community burden may be varied or discharged by registering against each affected unit a deed of variation, or discharge, granted, in a case where no such provision as is

mentioned in section 33(1)(a) of this Act is made, by or on behalf of the owners of the affected units and by or on behalf of the owners of all units (if any) which in relation to any of the affected units are adjacent units, except that this subsection—

- (a) shall not apply where the burden is a facility burden or a service burden or where the units constitute a sheltered or retirement housing development;
- (b) may expressly be disapplied by the constitutive deed; and
- (c) is subject to sections 36 and 37 of this Act and to any determination of the Lands Tribunal.

(2) Subsection (4) of section 33 of this Act applies for the purposes of this section as it applies for the purposes of that section.

36 Variation and discharge under section 35: intimation

(1) A proposal to register under section 35 of this Act a deed of variation or discharge shall be intimated to such owners of the units in the community as have not granted the deed.

(2) Such intimation may be given—

- (a) by sending a copy of the deed together with—
 - (i) a notice in, or as near as may be in, the form set out in schedule 5 to this Act; and
 - (ii) the explanatory note which immediately follows that form in that schedule;
- (b) by affixing to each affected unit and to—
 - (i) in a case where there exists one, and only one, lamp post which is situated within one hundred metres of that unit, that lamp post; or
 - (ii) in a case 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 6 to this Act; or

- (c) in a case where it is not possible to comply with paragraph (b) above, by advertisement in a newspaper circulating in the area of the affected unit.

(3) An advertisement giving intimation under subsection (2)(c) above shall—

- (a) identify the land which is the affected unit;
- (b) set out the terms of the community burden either in full or by reference to the constitutive deed;
- (c) specify the name and address of the person who proposes to register the deed and state that from that person (or from some other person whose name and address are specified in the advertisement) a copy of that deed may be obtained;
- (d) state that any owner of a unit who has not granted the deed may apply to the Lands Tribunal for Scotland for the community burden to be preserved but that if no such application is received by a specified date (being the date on which the period mentioned in section 37(1) of this Act expires) the consequence may be that the community burden is varied or discharged in relation to the affected unit.

(4) The person proposing to register the deed shall provide any other person with a copy of that deed if so requested by that other person.

- (5) Subsections (6) and (7) of section 21 of this Act apply in relation to affixing, and to a notice affixed, under subsection (2)(b) above as they apply in relation to affixing, and to a notice affixed, under subsection (2)(b) of that section (the reference in paragraph (a)(ii) of the said subsection (6) to the date specified in the notice as the renewal date being construed as a reference to the date so specified by virtue of subsection (2)(b) above).

37 Preservation of community burden in respect of which deed of variation or discharge has been granted as mentioned in section 35(1)

- (1) Where a deed of variation or, as the case may be, of discharge has been granted as mentioned in section 35(1) of this Act, any owner of a unit in the community who has not granted the deed may, during the period of eight weeks beginning with the latest date on which intimation of the proposal to register that deed is given under section 36(2) of this Act, apply to the Lands Tribunal for preservation, unvaried, of the community burden in so far as constituted in favour of, or against, any unit not all of whose owners have granted the deed.
- (2) A deed of variation or discharge granted as so mentioned shall not, on registration, vary or discharge a community burden in so far as constituted in favour of, or against, any unit not all of whose owners have granted the deed unless, after the expiry of the period mentioned in subsection (1) above, there is endorsed on it (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 register the deed has been received under this section or that any such application which has been received—
- (a) has been withdrawn; or
 - (b) relates to one or more but not to all of the community burdens the terms of which are set out in the deed (any community burden 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.
- (3) A deed of variation or discharge granted as so mentioned does not vary or discharge, in so far as constituted in favour of, or against, any unit not all of whose owners have granted the deed, a burden described by virtue of subsection (2)(b) above.
- (4) A person who proposes to submit a deed of variation or discharge granted as so mentioned for registration shall, before doing so, swear or affirm before a notary public (the deed being endorsed accordingly)—
- (a) that section 36 of this Act has been complied with; and
 - (b) as to the date on which the period mentioned in subsection (1) above expires, but if more than one person so proposes only one of them need so swear or affirm.
- (5) Subsection (2) of section 22 of this Act applies in relation to such a person and for the purposes of subsection (4) above as it applies in relation to a terminator and for the purposes of subsection (1) of that section.
- (6) For the purposes of subsection (1) above, intimation by affixing shall be taken to be given when first the notice is affixed.