Title Conditions (Scotland) Act 2003

2003 asp 9

PART 7

SERVITUDES

Transitional

80 Negative servitudes to become real burdens

(1) A negative servitude shall, on the appointed day, cease to exist as such but shall forthwith become a real burden (such a real burden being, for the purposes of this section, referred to as a "converted servitude").

(2) Subject to subsections (3) and (4) below, a converted servitude shall be extinguished on the expiry of the period of ten years beginning with the appointed day.

(3) If, before the appointed day, a negative servitude was registered against the burdened property or was noted in, or otherwise appeared in, the title sheet of that property the converted servitude shall not be extinguished as mentioned in subsection (2) above.

(4) If, during the period mentioned in subsection (2) above, an owner of the benefited property executes and duly registers, in (or as nearly as may be in) the form contained in schedule 9 to this Act, a notice of converted servitude, the converted servitude shall not be extinguished as mentioned in subsection (2) above (in so far as the burdened property, the benefited property and the converted servitude are, respectively, the burdened property, the benefited property, and the converted servitude identified in the notice of converted servitude).

(5) The notice of converted servitude shall—

(a) identify the land which is the burdened property (or any part of that land);

(b) identify the land which is the benefited property (or any part of that land);

(c) where the person registering the notice does not have a completed title to the benefited property, set out the midcouples linking that person to the person who last had such completed title;

(d) set out the terms of the converted servitude;

(e) include as an annexation the constitutive deed, if any (or a copy of such deed); and

(f) if the land identified for the purposes of paragraph (b) above is not nominated in the constitutive deed, set out the grounds, both factual and legal, for describing that land as a benefited property.

(6) For the purposes of subsection (4) above, a notice is, subject to section 116 of this Act, duly registered only when registered against both properties identified in pursuance of subsection (5)(a) and (b) above.

(7) Subsections (4) and (5) of section 50 of this Act shall apply in respect of a notice of converted servitude as they apply in respect of a notice of preservation.

(8) This section is subject to section 115 of this Act.

81 Certain real burdens to become positive servitudes

(1) A real burden consisting of a right to enter, or otherwise make use of, the burdened property shall, on the appointed day, cease to exist as such but shall forthwith become a positive servitude.

(2) Subsection (1) above—

(a) is subject to section 17(1) of the 2000 Act (extinction on appointed day of certain rights of superior);

(b) does not apply to real burdens such as are mentioned in section 2(3)(a) of this Act.