
Status: This is the original version (as it was originally enacted).

SCHEDULE 9

(introduced by section 80(4))

FORM OF NOTICE OF CONVERTED SERVITUDE

“NOTICE OF CONVERTED SERVITUDE

Name and address of person sending notice:

Description of burdened property:
(see note for completion 1)

Description of benefited property:
(see note for completion 1)

[Links in title:]
(see note for completion 2)

Terms of converted servitude:
(see note for completion 3)

Explanation of why the property described as a benefited property is such a property:
(see note for completion 4)

Service:
(see note for completion 5)

I swear [or affirm] that the information contained in this notice is, to the best of my knowledge and belief, true. The constitutive deed [or A copy of the constitutive deed] is annexed to the notice.
(see note for completion 6)

Signature of person sending notice:
(see note for completion 7)

Signature of notary public:

Date: .

Explanatory note for owner of burdened property

(This explanation has no legal effect)

This notice is sent by a person who asserts that the use of your property is affected by a converted servitude which the sender is entitled to enforce. In this notice your property (or some part of it) is referred to as the “burdened property” and the property belonging to the sender is referred to as the “benefited property”. The “converted servitude” is a condition which may affect the use of your property. Formerly a servitude, the condition was converted into a real burden by subsection (1) of section 80 of the Title Conditions (Scotland) Act 2003 (asp 9).

At the moment the converted servitude is not disclosed against your title on the property registers. By subsection (2) of that section the sender’s right will be lost unless this notice is registered in the Land Register of Scotland or the Register of Sasines by not later than *[insert date ten years after the appointed day]*. Registration preserves the right and means that the converted servitude can continue to be enforced by the sender, and by anyone succeeding the sender as owner of that property.

This notice does not require you to take any action; but if you think there is a mistake in it, or if you wish to challenge it, you are advised to contact your solicitor or other adviser. A notice can be challenged even after it has been registered.

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Notes for completion of the notice

(These notes have no legal effect)

- 1 A single notice may be used for any properties covered by the same constitutive deed. Describe the property in a way that is sufficient to identify it. Where the title has been registered in the Land Register the description should refer to the title number of the property or of the larger subjects of which the property forms part. Otherwise it should normally refer to and identify a deed recorded in a specified division of the Register of Sasines.
- 2 Include the section "Links in title" only if the person sending the notice does not have a completed title to the benefited property. List the midcouple (or midcouples) linking that person with the person who had the last completed title.
- 3 A single notice may be used for any converted servitudes created in the same constitutive deed. Set out the converted servitude in full or refer to the constitutive deed in such a way as to identify the servitude. If there is no such deed, explain the factual and legal circumstances in which the servitude was created.
- 4 Complete this part only if the land described as the benefited property is not nominated as such by the constitutive deed. Explain the legal and factual grounds on which that land is a benefited property in relation to the burdened property and the converted servitude described in the notice.
- 5 Do not complete until a copy of the notice, together with the constitutive deed and the explanatory note, has been sent (or delivered) to the owner of the burdened property (except in a case where that is not reasonably practicable). Then insert whichever is applicable of the following:

"A copy of this notice has been sent by [state method and if by post specify whether by recorded delivery, by registered post or by ordinary post] on [date] to the owner of the burdened property at [address]"; or

"It has not been reasonably practicable to send a copy of this notice to the owner of the burdened property for the following reason: [specify the reason]."
- 6 Endorse on the constitutive deed (or copy) words to the effect of: "This is the constitutive deed referred to in the notice of converted servitude by [give name of person sending the notice] dated [give date]". The endorsement need not be signed.
- 7 The person sending the notice should not swear or affirm, or sign, until a copy of the notice has been sent (or otherwise) as mentioned in note 5. Before signing, the sender should swear or affirm before a notary public (or, if the notice is being completed outwith Scotland, before a person duly authorised under the local law to administer oaths or receive affirmations) that, to the best of the sender's knowledge and belief, all the information contained in the notice is true. The notary public should also sign. Swearing or affirming a statement which is known to be false or which is believed not to be true is a criminal offence under the False Oaths (Scotland) Act 1933 (c.20). Normally the sender should swear or affirm, and sign, personally. If, however, the sender is legally disabled or incapable (for example because of mental disorder) a legal representative should swear or affirm, and sign. If the sender is not an individual (for example, if it is a company) a person entitled by law to sign formal documents on its behalf should swear or affirm, and sign.