



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 1

REAL BURDENS: GENERAL

Duration, enforceability and liability

10 Affirmative burdens: continuing liability of former owner

- (1) An owner of burdened property shall not, by virtue only of ceasing to be such an owner, cease to be liable for the performance of any relevant obligation.
 - (2) [^{F1}Subject to subsection (2A) below,] a person who becomes an owner of burdened property (any such person being referred to in this section as a “new owner”) shall be severally liable with any former owner of the property for any relevant obligation for which the former owner is liable.
- [^{F2}(2A) A new owner shall be liable as mentioned in subsection (2) above for any relevant obligation consisting of an obligation to pay a share of costs relating to maintenance or work (other than local authority work) carried out before the acquisition date only if—
- (a) notice of the maintenance or work—
 - (i) in, or as near as may be in, the form set out in schedule 1A to this Act; and
 - (ii) containing the information required by the notes for completion set out in that schedule,(such a notice being referred to in this section and section 10A of this Act as a “notice of potential liability for costs”) was registered in relation to the burdened property at least 14 days before the acquisition date; and
 - (b) the notice had not expired before the acquisition date.
- (2B) In subsection (2A) above—
- “acquisition date” means the date on which the new owner acquired right to the burdened property; and
- “local authority work” means work carried out by a local authority by virtue of any enactment.]

Changes to legislation: There are currently no known outstanding effects for the Title Conditions (Scotland) Act 2003, Section 10. (See end of Document for details)

- (3) A new owner who incurs expenditure in the performance of any relevant obligation for which a former owner of the property is liable may recover an amount equal to such expenditure from that former owner.
- (4) For the purposes of subsections (1) to (3) above, “relevant obligation” means any obligation under an affirmative burden which is due for performance; and such an obligation becomes due—
- (a) in a case where—
 - (i) the burden is a community burden; and
 - (ii) a binding decision to incur expenditure is made, on the date on which that decision is made; or
 - (b) in any other case, on—
 - (i) such date; or
 - (ii) the occurrence of such event, as may be stipulated for its performance (whether in the constitutive deed or otherwise).
- [^{F3}(5) This section does not apply in any case where section 12 of the Tenements (Scotland) Act 2004 (asp 11) applies.]

Textual Amendments

- F1** Words in s. 10(2) inserted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 4(a)** (with s. 33)
- F2** S. 10(2A)(2B) inserted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 4(b)** (with s. 33)
- F3** S. 10(5) added (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 4(c)** (with s. 33)

Modifications etc. (not altering text)

- C1** Ss. 2, 3, 5, 10, 11, 13, 14, 16, 18, 59 to 61, 67, 70 and 105 applied (1.6.2009) by The Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 (S.I. 2009/729), **art. 5(1)(3)(4)**

Commencement Information

- I1** S. 10 wholly in force; s. 10 in force for certain purposes at 4.4.2003 see s. 129(2)(5); s. 10 otherwise in force at 28.11.2004 by S.S.I. 2003/456, **art. 2**

Changes to legislation:

There are currently no known outstanding effects for the Title Conditions (Scotland) Act 2003, Section 10.