



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 1

REAL BURDENS: GENERAL

Extinction

16 Acquiescence

(1) Where—

- (a) a real burden is breached in such a way that material expenditure is incurred;
- (b) any benefit arising from such expenditure would be substantially lost were the burden to be enforced; and
- (c) in the case of—

- (i) a burden other than a conservation burden, economic development burden or health care burden, the owner of the benefited property (if any) has an interest to enforce the burden in respect of the breach and consents to the carrying on of the activity which results in that breach, or every person by whom the burden is enforceable and who has such an interest, either so consents or, being aware of the carrying on of that activity (or, because of its nature, being in a position where that person ought to be aware of it), has not, by the expiry of such period as is in all the circumstances reasonable (being in any event a period which does not exceed that of twelve weeks beginning with the day by which that activity has been substantially completed), objected to its being carried on; or
- (ii) a conservation burden, economic development burden or health care burden, the person by whom the burden is enforceable consents to the carrying on of that activity,

the burden shall, to the extent of the breach, be extinguished.

- (2) Where the period of twelve weeks following the substantial completion of an activity has expired as mentioned in sub-paragraph (i) of subsection (1)(c) above, it shall be presumed, unless the contrary is shown, that the person by whom the real burden was, at the time in question, enforceable (or where a burden is enforceable by more than

Status: This is the original version (as it was originally enacted).

one person, each of those persons) was, or ought to have been, aware of the carrying on of the activity and did not object as mentioned in that sub-paragraph.