



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 1

REAL BURDENS: GENERAL

Meaning and creation

3 Other characteristics

- (1) A real burden must relate in some way to the burdened property.
- (2) The relationship may be direct or indirect but shall not merely be that the obligated person is the owner of the burdened property.
- (3) In a case in which there is a benefited property, a real burden must, unless it is a community burden, be for the benefit of that property.
- (4) A community burden may be for the benefit of the community to which it relates or of some part of that community.
- (5) A real burden may consist of a right of pre-emption; but a real burden created on or after the appointed day must not consist of—
 - (a) a right of redemption or reversion; or
 - (b) any other type of option to acquire the burdened property.
- (6) A real burden must not be contrary to public policy as for example an unreasonable restraint of trade and must not be repugnant with ownership (nor must it be illegal).
- (7) Except in so far as expressly permitted by this Act, a real burden must not have the effect of creating a monopoly (as for example, by providing for a particular person to be or to appoint—
 - (a) the manager of property; or
 - (b) the supplier of any services in relation to property).
- (8) It shall not be competent—
 - (a) to make in the constitutive deed provision; or
 - (b) to import under section 6(1) of this Act terms which include provision,

Status: This is the original version (as it was originally enacted).

to the effect that a person other than the holder of the burden may waive compliance with, or mitigate or otherwise vary, a condition of the burden.

(9) Subsection (8) above is without prejudice to section 33(1)(a) of this Act.