



# Title Conditions (Scotland) Act 2003

## 2003 asp 9

### PART 2

#### COMMUNITY BURDENS

##### *Variation, discharge etc.*

#### **37 Preservation of community burden in respect of which deed of variation or discharge has been granted as mentioned in section 35(1)**

- (1) Where a deed of variation or, as the case may be, of discharge has been granted as mentioned in section 35(1) of this Act, any owner of a unit in the community who has not granted the deed may, during the period of eight weeks beginning with the latest date on which intimation of the proposal to register that deed is given under section 36(2) of this Act, apply to the Lands Tribunal for preservation, unvaried, of the community burden in so far as constituted in favour of, or against, any unit not all of whose owners have granted the deed.
- (2) A deed of variation or discharge granted as so mentioned shall not, on registration, vary or discharge a community burden in so far as constituted in favour of, or against, any unit not all of whose owners have granted the deed unless, after the expiry of the period mentioned in subsection (1) above, there is endorsed on it (or on an annexation to it referred to in an endorsement on it and identified, on the face of the annexation, as being the annexation so referred to) a certificate executed by a member of the Lands Tribunal, or by their clerk, to the effect that no application in relation to the proposal to register the deed has been received under this section or that any such application which has been received—
  - (a) has been withdrawn; or
  - (b) relates to one or more but not to all of the community burdens the terms of which are set out in the deed (any community burden to which it relates being described in the certificate),

and where more than one such application has been received the certificate shall relate to both (or as the case may be all) applications.

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*Status: This is the original version (as it was originally enacted).*

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- (3) A deed of variation or discharge granted as so mentioned does not vary or discharge, in so far as constituted in favour of, or against, any unit not all of whose owners have granted the deed, a burden described by virtue of subsection (2)(b) above.
- (4) A person who proposes to submit a deed of variation or discharge granted as so mentioned for registration shall, before doing so, swear or affirm before a notary public (the deed being endorsed accordingly)—
  - (a) that section 36 of this Act has been complied with; and
  - (b) as to the date on which the period mentioned in subsection (1) above expires, but if more than one person so proposes only one of them need so swear or affirm.
- (5) Subsection (2) of section 22 of this Act applies in relation to such a person and for the purposes of subsection (4) above as it applies in relation to a terminator and for the purposes of subsection (1) of that section.
- (6) For the purposes of subsection (1) above, intimation by affixing shall be taken to be given when first the notice is affixed.