



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 1

REAL BURDENS: GENERAL

Meaning and creation

4 Creation

- (1) A real burden is created by duly registering the constitutive deed except that, notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.), the constitutive deed may provide for the postponement of the effectiveness of the real burden to—
 - (a) a date specified in that deed (the specification being of a fixed date and not, for example, of a date determinable by reference to the occurrence of an event); or
 - (b) the date of registration of some other deed so specified.
- (2) The reference in subsection (1) above to the constitutive deed is to a deed which—
 - (a) sets out (employing, unless subsection (3) below is invoked, the expression “real burden”) the terms of the prospective real burden;
 - (b) is granted by or on behalf of the owner of the land which is to be the burdened property; and
 - (c) except in the case mentioned in subsection (4) below, nominates and identifies—
 - (i) that land;
 - (ii) the land (if any) which is to be the benefited property; and
 - (iii) any person in whose favour the real burden is to be constituted (if it is to be constituted other than by reference to the person’s capacity as owner of any land).
- (3) Where the constitutive deed relates, or purports to relate, to the creation of a nameable type of real burden (such as, for example, a community burden), that deed may, instead of employing the expression “real burden”, employ the expression appropriate to that type.

Status: This is the original version (as it was originally enacted).

- (4) Where the constitutive deed relates to the creation of a community burden, that deed shall nominate and identify the community.
- (5) For the purposes of this section, a constitutive deed is duly registered in relation to a real burden only when registered against the land which is to be the burdened property and (except where there will be no benefited property or the land in question is outwith Scotland) the land which is to be the benefited property.
- (6) A right of ownership held pro indiviso shall not in itself constitute a property against which a constitutive deed can be duly registered.
- (7) This section is subject to sections 73(2) and 90(8) of this Act and is without prejudice to section 6 of this Act.