



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 1

REAL BURDENS: GENERAL

Duration, enforceability and liability

8 Right to enforce

- (1) A real burden is enforceable by any person who has both title and interest to enforce it.
- (2) A person has such title if an owner of the benefited property; but the following persons also have such title—
 - (a) a person who has a real right of lease or proper liferent in the benefited property (or has a pro indiviso share in such right);
 - (b) a person who—
 - (i) is the non-entitled spouse [^{F1}or non entitled partner] of an owner of the benefited property or of a person mentioned in paragraph (a) above; and
 - (ii) has occupancy rights in that property; and
 - (c) if the real burden was created as mentioned in subsection (3)(b) below, a person who was, at the time the cost in question was incurred—
 - (i) an owner of the benefited property; or
 - (ii) a person having such title by virtue of paragraph (a) or (b) above.
- (3) A person has such interest if—
 - (a) in the circumstances of any case, failure to comply with the real burden is resulting in, or will result in, material detriment to the value or enjoyment of the person's ownership of, or right in, the benefited property; or
 - (b) the real burden being an affirmative burden created as an obligation to defray, or contribute towards, some cost, that person seeks (and has grounds to seek) payment of, or as respects, that cost.
- (4) A person has title to enforce a real burden consisting of—
 - (a) a right of pre-emption, redemption or reversion; or

Changes to legislation: There are currently no known outstanding effects for the Title Conditions (Scotland) Act 2003, Section 8. (See end of Document for details)

(b) any other type of option to acquire the burdened property, only if the owner of the benefited property.

[^{F2}(5) In subsection (2)(b) above–

“non-entitled partner” shall be construed in accordance with section 101(1) of the Civil Partnership Act 2004 (c. 33) (right of civil partner without title to occupy family home);

“non-entitled spouse” shall be construed in accordance with section 1 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59) (right of spouse without title to occupy matrimonial home); and

“occupancy rights” shall be construed, in relation to non-entitled partners, in accordance with section 135 of the 2004 Act and, in relation to non-entitled spouses, in accordance with section 1 of the 1981 Act.]

(6) Subsections (2) to (5) above do not apply in relation to a personal real burden.

Textual Amendments

- F1** Words in s. 8(2)(b)(i) inserted (30.6.2006) by [The Civil Partnership Act 2004 \(Consequential Amendments\) \(Scotland\) Order 2006 \(S.S.I. 2006/379\)](#), **art. 3(a)**
- F2** S. 8(5) substituted (30.6.2006) by [The Civil Partnership Act 2004 \(Consequential Amendments\) \(Scotland\) Order 2006 \(S.S.I. 2006/379\)](#), **art. 3(b)**

Commencement Information

- I1** S. 8 wholly in force; s. 8 in force for certain purposes at 4.4.2003, see s. 129(2)(5); s. 8 otherwise in force at 28.11.2004 by [S.S.I. 2003/456](#), **art. 2**

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