



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 1

REAL BURDENS: GENERAL

Extinction

15 Discharge

- (1) A real burden is discharged as respects a benefited property by registering against the burdened property a deed of discharge granted by or on behalf of the owner of the benefited property.
- (2) In subsection (1) above, “discharged” means discharged—
 - (a) wholly; or
 - (b) to such extent as may be specified in the deed of discharge.

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

Status: This is the original version (as it was originally enacted).

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 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.

17 Further provision as regards extinction where no interest to enforce

Where at any time a real burden is breached but at that time no person has an interest to enforce it in respect of the breach, the burden shall, to the extent of the breach, be extinguished.

18 Negative prescription

- (1) Subject to subsection (5) below, if—

- (a) a real burden is breached to any extent; and
- (b) during the period of five years beginning with the breach neither—
 - (i) a relevant claim; nor
 - (ii) a relevant acknowledgement,
 is made,

then, subject to subsection (2) below, the burden shall, to the extent of the breach, be extinguished on the expiry of that period.

- (2) Subject to subsections (5) and (6) below, where, in relation to a real burden which consists of—

- (a) a right of pre-emption, redemption or reversion; or
- (b) any other type of option to acquire the burdened property,

the owner of the burdened property fails to comply with an obligation to convey (or, as the case may be, to offer to convey) the property (or part of the property) and paragraph (b) of subsection (1) above is satisfied, the burden shall be extinguished in relation to the property (or part) on the expiry of the period mentioned in the said paragraph (b).

- (3) Sections 9 and 10 of the Prescription and Limitation (Scotland) Act 1973 (c. 52) (which define the expressions “relevant claim” and “relevant acknowledgement” for the purposes of sections 6, 7 and 8A of that Act) shall apply for the purposes of subsections (1) and (2) above as those sections apply for the purposes of sections 6, 7 and 8A of that Act but subject to the following modifications—

- (a) in each of sections 9 and 10 of that Act—
 - (i) subsection (2) shall not apply;
 - (ii) for any reference to an obligation there shall be substituted a reference to a real burden; and

- (iii) for any reference to a creditor there shall be substituted a reference to any person by whom a real burden is enforceable;
 - (b) in section 9 of that Act, for the reference to a creditor in an obligation there shall be substituted a reference to any person by whom a real burden is enforceable; and
 - (c) in section 10 of that Act, for any reference to a debtor there shall be substituted a reference to any person against whom the real burden is enforceable.
- (4) Section 14 of the said Act of 1973 (which makes provision as respects the computation of prescriptive periods) shall apply for the purposes of subsections (1) and (2) above as that section applies for the purposes of Part I of that Act except that paragraph (a) of subsection (1) of that section shall for the purposes of those subsections be disregarded.
- (5) In relation to a breach occurring before the appointed day, subsections (1) and (2) above apply with the substitution in paragraph (b) of subsection (1), for the words “period of five years beginning with the breach”, of the words “appropriate period”.
- (6) In the case of a right of pre-emption constituted as a rural housing burden, subsection (2) above shall apply with the modification that for the words “the burden shall be extinguished in relation to the property (or part) on” there shall be substituted “it shall not be competent to commence any action in respect of that failure after”.
- (7) The reference, in subsection (5) above, to the “appropriate period” is to whichever first expires of—
 - (a) the period of five years beginning with the appointed day; and
 - (b) the period of twenty years beginning with the breach.

19 Confusio not to extinguish real burden

A real burden is not extinguished by reason only that—

- (a) the same person is the owner of the benefited property and the burdened property; or
- (b) in a case in which there is no benefited property, the person in whose favour the real burden is constituted is the owner of the burdened property.