



# Title Conditions (Scotland) Act 2003

## 2003 asp 9

### PART 8

#### PRE-EMPTION AND REVERSION

##### *Pre-emption*

#### **82 Application and interpretation of sections 83 and 84**

Sections 83 and 84 of this Act apply to any subsisting right of pre-emption constituted as a title condition which—

- (a) was originally created in favour of a feudal superior; or
- (b) was created in a deed executed after 1st September 1974,

and for the purposes of sections 83(1)(a) and 84(1)(b) of this Act the person last registered as having title to a personal pre-emption burden or rural housing burden shall be taken to be the holder for a right of pre-emption which that burden comprises.

#### **83 Extinction following pre-sale undertaking**

(1) Where, in relation to any burdened property (or, as the case may be, part of such property)—

- (a) the holder of a right of pre-emption to which this section applies gives an undertaking (in the form, or as nearly as may be in the form, contained in schedule 10 to this Act) that, subject to such conditions (if any) as the holder may specify in the undertaking, the holder will not exercise that right during such period as may be so specified;
- (b) a conveyance in implement of the sale of the burdened property (or part) is registered before the end of that period; and
- (c) any conditions specified under paragraph (a) above have been satisfied,

such right shall, on registration of such a conveyance, be extinguished unless the right is constituted as a rural housing burden in which case the title condition shall be taken to have been complied with as respects that sale only.

(2) Any undertaking given under subsection (1) above—

- (a) is binding on the holder of the right of pre-emption; and

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*Status: This is the original version (as it was originally enacted).*

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- (b) if registered is binding on any successor as holder provided that the undertaking was registered before the successor completed title.

#### **84 Extinction following offer to sell**

- (1) If in relation to a right of pre-emption to which this section applies—
  - (a) an event specified in the constitutive deed as an event on the occurrence of which such right may be exercised occurs; and
  - (b) the owner of the burdened property makes, in accordance with subsections (2) to (6) below, an offer to sell that property (or, as the case may be, part of that property) to the holder of such right,

then such right shall, in relation to that property (or part), be extinguished unless it is constituted as a rural housing burden in which case the title condition shall be taken to have been complied with as respects that event only.
- (2) An offer shall be in writing and shall comply with section 2 of the Requirements of Writing (Scotland) Act 1995 (c. 7) (requirements for formal validity of certain documents).
- (3) An offer shall be open for acceptance during whichever is the shorter of—
  - (a) the period of 21 days, or where the right is constituted as a rural housing burden 42 days, beginning with the day on which the offer is sent;
  - (b) such number of days beginning with that day as may be specified in the constitutive deed.
- (4) An offer shall be made on such terms as may be set out, or provided for, in the constitutive deed; but in so far as no such terms are set out, an offer shall be made on such terms (including any terms so provided for) as are reasonable in the circumstances.
- (5) Where—
  - (a) an offer is sent in accordance with this section; and
  - (b) the holder of the right does not, within the time allowed by virtue of subsection (3) above for acceptance of the offer, inform (in writing, whether or not transmitted by electronic means) the owner of the burdened property that the holder considers, giving reasons for so considering, that the terms on which the offer is made are unreasonable,

the terms of the offer shall, for the purposes of subsection (4) above, be deemed to be reasonable.
- (6) If the holder of a right cannot by reasonable inquiry be identified or found, an offer may be sent to the Extractor of the Court of Session; and for the purposes of this section an offer so sent shall be deemed to have been sent to the holder.

#### **85 Ending of council's right of pre-emption as respects certain churches**

In a scheme framed under subsection (1) of section 22 of the Church of Scotland (Property and Endowments) Act 1925 (c. 33) (schemes for the ownership, maintenance and administration of churches etc.), any provision made in accordance with subsection (2)(h) of that section (council's right of pre-emption) shall cease to have effect.