



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 1

REAL BURDENS: GENERAL

Meaning and creation

3 Other characteristics

- (1) A real burden must relate in some way to the burdened property.
- (2) The relationship may be direct or indirect but shall not merely be that the obligated person is the owner of the burdened property.
- (3) In a case in which there is a benefited property, a real burden must, unless it is a community burden, be for the benefit of that property.
- (4) A community burden may be for the benefit of the community to which it relates or of some part of that community.
- (5) A real burden may consist of a right of pre-emption; but a real burden created on or after the appointed day must not consist of—
 - (a) a right of redemption or reversion; or
 - (b) any other type of option to acquire the burdened property.
- (6) A real burden must not be contrary to public policy as for example an unreasonable restraint of trade and must not be repugnant with ownership (nor must it be illegal).
- (7) Except in so far as expressly permitted by this Act, a real burden must not have the effect of creating a monopoly (as for example, by providing for a particular person to be or to appoint—
 - (a) the manager of property; or
 - (b) the supplier of any services in relation to property).
- (8) It shall not be competent—
 - (a) to make in the constitutive deed provision; or
 - (b) to import under section 6(1) of this Act terms which include provision,

Changes to legislation: There are currently no known outstanding effects for the Title Conditions (Scotland) Act 2003, Section 3. (See end of Document for details)

to the effect that a person other than [F1 a holder] of the burden may waive compliance with, or mitigate or otherwise vary, a condition of the burden.

(9) Subsection (8) above is without prejudice to section 33(1)(a) of this Act.

Textual Amendments

F1 Words in s. 3(8) substituted (23.10.2004) by Tenements (Scotland) Act 2004 (asp 11), ss. 25, 34(3), **Sch. 4 para. 2** (with s. 33)

Modifications etc. (not altering text)

C1 Ss. 2, 3, 5, 10, 11, 13, 14, 16, 18, 59 to 61, 67, 70 and 105 applied (1.6.2009) by The Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 (S.I. 2009/729), **art. 5(1)(3)(4)**

Commencement Information

I1 S. 3 wholly in force; s. 3 in force for certain purposes at 4.4.2003 see s. 129(2)(5); s. 3 otherwise in force at 28.11.2004 by S.S.I. 2003/456, **art. 2**

Changes to legislation:

There are currently no known outstanding effects for the Title Conditions (Scotland) Act 2003, Section 3.