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STATUTORY INSTRUMENTS

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**2009 No. 729**

**The Title Conditions (Scotland) Act 2003  
(Development Management Scheme) Order 2009**

**PART 3**

**Variation of the Development Management Scheme**

**Variation of Scheme in deed of application**

6.—(1) A deed of application may, subject to paragraph (2), apply the Development Management Scheme to any land with such variations as may be specified in the deed of application.

(2) The rules in Part 2 of Schedule 1 to this Order may not be varied in a deed of application other than in accordance with paragraph (3).

(3) The deed of application must specify (as required in the instructions in rule 2.2) the name of the association, being a name which either ends with the words “Owners' Association” or begins with those words preceded by the definite article.

**Variation of Scheme with agreement of owners of affected and adjacent units**

7.—(1) A rule of the Development Management Scheme (other than any rule in Part 2 of Schedule 1 to this Order) may be varied, or discharged, in relation to a unit by registering against that unit (“the affected unit”) a deed of variation granted—

- (a) by the association, in accordance with the Development Management Scheme;
- (b) by the owner of the affected unit; and
- (c) by the owner of at least one adjacent unit (if any) in relation to the affected unit.

(2) For the purposes of paragraph (1), “adjacent unit” means, in relation to an affected unit, any unit which is at some point within four metres of the affected unit.

(3) The reference in paragraph (2) to an adjacent unit being within four metres of the affected unit is a reference to distance along a horizontal plane, disregarding—

- (a) the width of any intervening road if of less than twenty metres; and
- (b) any pertinent of either unit.

**Variation of Scheme generally by owners' association**

8. A rule of the Development Management Scheme (other than any rule in Part 2 of Schedule 1 to this Order) may, subject to article 9, be varied, or discharged, in relation to a unit by registering against that unit a deed of variation granted by the association in accordance with the Development Management Scheme.

### **Intimation of variation under article 8**

9.—(1) Where a deed of variation is granted under article 8, a proposal to register that deed must be intimated by the association to the members.

(2) Intimation under paragraph (1) is to be given by sending a copy of the deed, together with—

- (a) a notice in, or as near as may be in, the form set out in Schedule 2 to this Order; and
- (b) the note which immediately follows that form in that Schedule.

(3) A member may, during the period of eight weeks beginning with the date on which intimation of the proposal to register the deed is given to that member under paragraph (1), apply under article 22(1)(b) to the Lands Tribunal for preservation, unvaried, of the Development Management Scheme or a rule thereof.

(4) A deed of variation granted under article 8 does not, on registration, vary or discharge a rule of the Development Management Scheme unless, after the expiry of the period of eight weeks beginning with the latest date on which intimation is given under paragraph (1), there is endorsed on it (or on an annexation to it referred to in an endorsement on it and identified, on the face of the annexation, as being the annexation so referred to) a certificate executed by a member of the Lands Tribunal, or by their clerk, to the effect that no application in relation to the proposal to register the deed has been received under article 22(1)(b) or that any such application which has been received—

- (a) has been withdrawn; or
- (b) relates to one or more but not to all of the rules of the Development Management Scheme to be varied or discharged by the deed (any rule to which it relates being described in the certificate),

and where more than one such application has been received the certificate must relate to both or (as the case may be) all applications.

(5) Registration of a deed of variation granted under article 8 does not vary or discharge any rule described in a certificate by virtue of paragraph (4)(b).

(6) Before a deed of variation granted under article 8 is submitted for registration a certificate must be endorsed on the deed by the association confirming—

- (a) that paragraphs (1) and (2) have been complied with; and
- (b) as to the date on which the period mentioned in paragraph (4) expires.

### **Enforcement of rules by members**

10.—(1) Notwithstanding article 6(2), 7(1) or 8, a deed of application or a deed of variation may confer a right to enforce all or some of the rules of the Development Management Scheme on a member and the right to enforce may be conferred in respect of specified units or all the units in the development.

(2) Where a deed of application or a deed of variation confers a right to enforce a rule on a member, the member is entitled to enforce the rule only if the member has interest to enforce it.

(3) A member has such interest if, in the circumstances of any case, failure to comply with the rule is resulting in, or will result in, material detriment to the value or enjoyment of the member's ownership of the unit.

### **Further provision as respects deeds of variation**

11.—(1) Where a deed of variation is granted no grantee is required.

(2) A deed of variation may be registered by an owner of a burdened unit or by a grantor.