

# **Title Conditions (Scotland) Bill**

[ CONSULTATION DRAFT ]

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## CONTENTS

Section

- 1 Common schemes: rights of enforcement
- 2 Extinction and preservation of rights of enforcement
- 3 Consequential amendments
- 4 Interpretation of Title Conditions (Scotland) Act 2003: the expression “common scheme”
- 5 Ancillary provision
- 6 Regulations
- 7 Commencement
- 8 Short title



# Title Conditions (Scotland) Bill

## [CONSULTATION DRAFT]

An Act of the Scottish Parliament to amend the law relating to the enforceability of real burdens; and for connected purposes.

### 1 Common schemes: rights of enforcement

After section 53 of the Title Conditions (Scotland) Act 2003, insert—

#### **“53A Real burdens imposed under a common scheme: related units’ rights of enforcement**

- (1) This section applies to real burdens imposed under a common scheme on a group of units (in this section referred to as “the group”).
- (2) As respects any such real burden, a unit subject to the common scheme (in this section referred to as “unit A”) shall be a benefited property in relation to any other unit so subject (in this section referred to as “unit B”) if—
  - (a) in the case of any unit of the group (whether or not that unit is either of units A and B), the deed by which the real burden is imposed is a deed registered before the appointed day; and
  - (b) units A and B are related.
- (3) For the purposes of subsection (2)(b) above, units A and B are related where at least one of the conditions mentioned in subsection (4) below is met.
- (4) The conditions are that—
  - (a) each of units A and B is a flat in the same tenement;
  - (b) the common scheme provides for units A and B (whether or not with all or any of the other units of the group) to be managed together for the purposes of some or all of the burdens;
  - (c) each of units A and B is subject to the common scheme by virtue of the same deed;
  - (d) units A and B share ownership of common property (not being common property which constitutes a line of demarcation between units A and B, such as a fence or boundary wall);
  - (e) unit A is, at some point, within twenty metres of unit B.
- (5) But paragraph (e) of subsection (4) is to be disregarded—
  - (a) if the deed imposing the real burden on unit B was not registered before the appointed day,
  - (b) in the absence of any notice of the common scheme in that deed (or in a constitutive deed incorporated in that deed), being notice which—
    - (i) is express, or

- (ii) is so worded that the existence of the common scheme must necessarily be implied, or
  - (c) if in that deed (or constitutive deed) provision is made which expressly or by necessary implication, as for example by reservation of a right to vary or waive the real burden, excludes unit A from being a benefited property in relation to the real burden.
- (6) In the application of section 4 of this Act to any real burden imposed as mentioned in subsection (1) above, the following provisions of that section are to be disregarded—
- (a) in subsection (2), paragraph (c)(ii);
  - (b) subsection (4); and
  - (c) in subsection (5), the words from “and” to the end.
- (7) This section—
- (a) confers no right of pre-emption, redemption or reversion; and
  - (b) is subject to sections 53B, 57 and 122(2)(ii) of this Act.

**53B Subdivision on or after the coming into force of this section**

- (1) Subsection (2) applies where, on or after the coming into force of this section, land—
- (a) on which real burdens were imposed before the appointed day, and
  - (b) which is not already one of a group of units subject to the real burdens under a common scheme,
- is subdivided into two or more parts.
- (2) It is not to be implied, by virtue of section 53A of this Act, that as respects the real burdens either or any of those parts is a benefited property in relation to any other of those parts.”.

**2 Extinction and preservation of rights of enforcement**

Before section 54 of the Title Conditions (Scotland) Act 2003 insert—

**“53C Extinction of rights of enforcement enjoyed by virtue of either or both of sections 52 and 53**

On and after such day as may be prescribed for the purposes of this section by regulations made by the Scottish Ministers, no real burden shall be enforceable by virtue of either or both of sections 52 and 53 of this Act; but this section is subject to section 53D(1) of this Act.

**53D Preservation of rights of enforcement enjoyed by virtue of either or both of sections 52 and 53**

- (1) An owner of land which is a benefited property by virtue of either or both of sections 52 and 53 of this Act may, during the period between the coming into force of section 2 of the Title Conditions (Scotland) Act 2019 and the day prescribed under section 53C of this Act, execute and duly register in (or as nearly as may be in) such form as may be prescribed for the purposes of this section by regulations made by the Scottish Ministers, a notice of preservation as respects the land; and if the owner does so then despite section 53C the real burden shall, after the expiry of that period, continue to be enforceable by virtue of, as the case may be, either or both of sections 52 and 53, but only in so far as the burdened property, the benefited property and the real burden are the burdened property, the benefited property and the real burden identified in the notice of preservation.
- (2) The notice of preservation shall—
  - (a) identify the land which is the burdened property (or any part of that land);
  - (b) identify the land which is the benefited property (or any part of that land);
  - (c) where the person registering the notice does not have a completed title to the benefited property, set out the midcouples linking that person to the person who last had such completed title;
  - (d) set out the terms of the real burden; and
  - (e) set out the grounds, both factual and legal, for describing as a benefited property the land identified in pursuance of paragraph (b) above.
- (3) For the purposes of subsection (1) above, a notice is, subject to section 116 of this Act, duly registered only when registered against both properties identified in pursuance of subsection (2)(a) and (b) above.
- (4) A person submitting any notice for registration under this section shall, before doing so, swear or affirm before a notary public that to the best of the knowledge and belief of the person all the information contained in the notice is true.
- (5) For the purposes of subsection (4) above, if the person is—
  - (a) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in that subsection, then a legal representative of the person may swear or affirm;
  - (b) not an individual, then any person authorised to sign documents on its behalf may swear or affirm;and any reference in that subsection to a person shall be construed accordingly.
- (6) This section is subject to section 115 of this Act.

**53E Notices under section 53D: extent of Keeper's duty**

In relation to any notice submitted for registration under section 53D of this Act, the Keeper of the Registers of Scotland shall not be required to determine whether the real burden identified in the notice is enforceable by virtue of either or both of sections 52 and 53 of this Act (or any question as to who might so enforce it).”.

**3 Consequential amendments**

- (1) In consequence of the amendments made by sections 1 and 2, the Title Conditions (Scotland) Act 2003 is further amended as follows.
- (2) In section 4(7) (creation), after “53(3A),” insert “53A(6),”.
- (3) In section 57 (further provisions as respects rights of enforcement)—
  - (a) for subsection (1) substitute—
 

“(1) Nothing in—

    - (a) section 52 or 53, or in sections 54 to 56, of this Act revives a right of enforcement waived or otherwise lost before the appointed day; or
    - (b) sections 53A to 53E of this Act revives a right of enforcement waived or otherwise lost before the day prescribed under section 53C of this Act.”,
  - (b) in subsection (3) after “53” insert “and 54”, and
  - (c) after subsection (3) insert—
 

“(3A) And section 53A does not confer any such right in respect of anything done, or omitted to be done, in contravention of the terms of a real burden before the day prescribed under section 53C of this Act.”.
- (4) In section 102(1) (referral to Lands Tribunal of notice dispute), after “50” insert “, 53D”.
- (5) In section 115 (further provision as regards notices of preservation or of converted servitude)—
  - (a) in subsection (2)—
    - (i) in paragraph (b), at the beginning insert “in the case of a notice of preservation executed under section 50(1) of this Act or of a notice of converted servitude,”, and
    - (ii) after paragraph (b) (and before the word “and” which immediately follows that paragraph) insert—
 

“(ba) in the case of a notice of preservation executed under section 53D(1) of this Act, such explanatory note for the owner of the burdened property as may be provided for in regulations under that section prescribing the form of that notice;”,
  - (b) in paragraph (a) of subsection (6), at the beginning insert “a notice of preservation executed under section 50(1) of this Act or of converted servitude, being in either case”,
  - (c) after subsection (6) insert—
 

“(6A) Subsection (6B) applies where—

- (a) a notice of preservation executed under section 53D(1) of this Act and submitted before the prescribed day is rejected by the Keeper; but
  - (b) a court or the Lands Tribunal then determines that the notice is registrable.
- (6B) The notice may, if not registered before the prescribed day, be registered—
- (a) within two months after the determination is made; but
  - (b) before such date after the prescribed day as the Scottish Ministers may by regulations prescribe;
- and any notice registered under this subsection shall be treated as if it had been registered before the prescribed day.”,
- (d) in subsection (7), for “subsection (6)” substitute “subsections (6)(b) and (6A)(b)”,
  - (e) in subsection (8), for “subsection (6)(b)” substitute “subsections (6)(b) and (6A)(b)”, and
  - (f) after subsection (8) insert—
- “(9) In this section, “the prescribed day” means the day prescribed under section 53C of this Act.”.
- (6) In section 122(1) (interpretation)—
- (a) after the definition of “burdened property”, insert—
- “ “common scheme” shall be construed in accordance with section 57A of this Act;”, and
- (b) in the definition of “notice of preservation”, for “section 50” substitute “sections 50 and 53D”.

#### **4 Interpretation of Title Conditions (Scotland) Act 2003: the expression “common scheme”**

After section 57 of the Title Conditions (Scotland) Act 2003 insert—

##### **“57A The expression “common scheme”**

- (1) In sections 52(1), 53(1), 53A(1) and 54(1) of this Act any reference, however expressed, to the imposition of real burdens under a common scheme is to the imposition of the same, or similar, real burdens on two or more properties, whether or not by one person; and any other reference in this Act to a common scheme is to be construed accordingly.
- (2) In determining whether real burdens are so imposed—
  - (a) regard must be had to the deeds by which the burdens have been imposed; and
  - (b) the burdens must be considered as a whole.”.

**5 Ancillary provision**

- (1) The Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, or in consequence of, or for giving full effect to, any provision made by, under or by virtue of this Act.
- (2) Regulations under subsection (1) may modify any enactment (including this Act).

**6 Regulations**

Regulations under section 5 are subject to the affirmative procedure if they modify an enactment but otherwise are subject to the negative procedure.

**7 Commencement**

- (1) This section and section 8 come into force on the day after Royal Assent.
- (2) Section 1 comes into force on the day prescribed under section 53C of the Title Conditions (Scotland) Act 2003.
- (3) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

**8 Short title**

The short title of this Act is the Title Conditions (Scotland) Act 2019.