

Scottish Statutory Instrument 2003 No. 503

The Title Conditions (Scotland) Act 2003 (Consequential Provisions) Order 2003

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SCOTTISH STATUTORY INSTRUMENTS

2003 No. 503

TITLE CONDITIONS

**The Title Conditions (Scotland) Act 2003 (Consequential Provisions)
Order 2003**

Made

21st October 2003

*Coming into force in
accordance with article 1*

The Scottish Ministers, in exercise of the powers conferred by section 128(4) of the Title Conditions (Scotland) Act 2003^[1] and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 127(2) of that Act, been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Title Conditions (Scotland) Act 2003 (Consequential Provisions) Order 2003 and shall come into force on the day after the day on which it is made.

Amendment of enactments

2. The amendments specified in Parts I and II of the Schedule to this Order shall have effect.

HUGH HENRY

Authorised to sign by the Scottish Ministers

St Andrew's House, Edinburgh
21st October 2003

SCHEDULE 1

Article 2

PART 1

AMENDMENT OF PUBLIC GENERAL ACTS

Lands Clauses Consolidation (Scotland) Act 1845

1. The Lands Clauses Consolidation (Scotland) Act 1845^[2] shall be amended in accordance with paragraph 2.

2. In Schedule A (form of conveyance) after the second "convey" insert-

" Registration of this conveyance shall not extinguish the following real burdens [or, as the case may be, servitudes, or shall not disapply the development management scheme applied by] [Here set out in full, or refer to a deed setting out in full in such a way as to identify them, any real burdens or servitudes which are not to be extinguished by virtue of the exception to section 107(1) of the Title Conditions (Scotland) Act 2003, or, as the case may be, identify by reference to its deed of application any development management scheme which is not to be disapplied by virtue of that exception.]".

Abolition of Feudal Tenure etc. (Scotland) Act 2000

3. The Abolition of Feudal Tenure etc. (Scotland) Act 2000^[3] shall be amended in accordance with paragraphs 4 and 5.

4. In section 20 (reallotment of real burden by order of Lands Tribunal)-

(a) in subsection (3) omit-

"and section 17(1) of this Act shall have no effect as regards a real burden in respect of which such a notice has been so executed and registered"; and

(b) at the end of subsection (7) add-

" or

(b) the Lands Tribunal is not so satisfied, it may make an order refusing the application."

5. In section 77(2)(a) (commencement) omit "32,".

Title Conditions (Scotland) Act 2003

6. The Title Conditions (Scotland) Act 2003^[4] shall be amended in accordance with paragraphs 7 to 15.

7. In section 4(7) (creation) after "90(8)" insert "and (8A)".

8. In section 37(2)(b) (preservation of community burden) after "set out" insert "or referred to".

9. In section 90 (power of Lands Tribunal as respects title conditions)-

(a) in subsection (6) omit ", renewing";

(b) in subsection (7)(a) at the end add-

" or variation;"; and

(c) after subsection (8) insert-

" (8A) An order disapplying the development management scheme shall, where the deed of application makes such provision as is mentioned in section 73(2) of this Act, impose the real burdens in question."

10. In section 99(4)(a) (granting applications as respects development management schemes) after "scheme" insert-

" or a real burden imposed by the deed of disapplication".

11. In section 104(3) (taking effect of orders of Lands Tribunal)-

(a) after "scheme" insert-

" whether or not it imposes new burdens";

(b) after "preserved" insert-

" and the burdens imposed".

12. In section 106 (extinction of real burdens and servitudes etc. on compulsory acquisition of land)-

(a) in subsection (1) after "order" insert-

" to which this section applies"

(b) after subsection (4) insert-

" (4A) This section applies to a compulsory purchase order in respect of which notice is given under-

(a) paragraph 3 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) on or after the day on which section 109; or

(b) paragraph 2 of Schedule 5 to the Forestry Act 1967 (c. 10) on or after the day on which section 110,

of this Act comes into force."

13. In section 109 (amendment of Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947)-

(a) in subsection (3), in inserted sub-paragraph 3A(c), after "notice" omit "to the burdened property and";

(b) in subsection (3), in inserted paragraph 3B, after -

(i) "paragraph 3A(c) above" insert "(including that paragraph as it is applied by paragraph 6A below in relation to service of a notice under paragraph 6 below)";

(ii) after "paragraph 3(b) above" insert "or, as the case may be, paragraph 6 below";

(c) after subsection (4) insert-

" (4A) In paragraph 6 (which requires an acquiring authority to notify certain persons that a compulsory purchase order has been confirmed) the words "and a copy of the order as confirmed" shall be omitted.

(4B) After paragraph 6 there shall be inserted-

" **6A.** Paragraph 3A above applies in relation to service of a notice

under paragraph 6 above on any persons on whom notices with respect to the land were required to be served under heads (ii) and (iii) of paragraph 3(b) above as it applies in relation to service of a notice under those heads of the said paragraph 3(b).

6B. Where a notice-

(a) is required by paragraph 6 above to be served on any person mentioned in heads (ii) and (iii) of paragraph 3(b) above and service is by sending as mentioned in paragraph 3A(a) above, the acquiring authority shall send with the notice a copy of the order as confirmed;

(b) is required by the said paragraph 6 to be served on any person mentioned in heads (i) and (iv) of the said paragraph 3(b), the acquiring authority shall serve with the notice a copy of that order.

6C. In paragraph 6B(a) above, the requirement to send a copy of the order shall be construed in accordance with section 124 of the Title Conditions (Scotland) Act 2003 (asp 9) and as if what was being done was being done under that Act."

(d) in subsection (5) for "6A" substitute "6D".

14. In section 110 (amendment of Forestry Act 1967) in subsection (2), in inserted sub-paragraph 1B(c), after "notice" omit "to the burdened property and".

15. In section 122(1) (interpretation) in the definition of "holder" at the end add-

" but does not include a person who has title to enforce it only by virtue of any of paragraphs (a), (b) and (c) of section 8(2) of this Act".

PART II

AMENDMENT OF SUBORDINATE LEGISLATION

The Housing (Forms) (Scotland) Regulations 1974

16. - (1) The Housing (Forms) (Scotland) Regulations 1974^[5] are amended as follows.

(2) In Form 43 set out in the Schedule to the Regulations (form of compulsory purchase order for a housing action area for demolition)-

(a) after article 4 insert-

" ^{6A}**5.** The registration of a conveyance, as defined in section 106(5) of the Title Conditions (Scotland) Act 2003, in implement of this order

[shall not extinguish the real burdens and servitudes] [shall not disapply the development management scheme] described in the [Part III of the] Schedule hereto [but shall vary the real burdens and servitudes as specified in that Schedule] [but shall extinguish all rights to enforce such real burdens or servitudes other than the rights of those benefited proprietors and holders of personal real burdens specified in that Schedule] [shall extinguish the real burdens and servitudes described in [Part III of] the Schedule hereto only in relation to those parts of the burdened property specified in that [Part of the] Schedule.];

(b) after Part II of the Schedule to Form 43 insert-

" **[Part III - Effect of order on real burdens and servitudes/development management scheme.]*

Number on Map	Address of property	*[Preservation/variation of [rights to enforce] real burdens or servitudes] [Preservation of development management scheme.] ⁹
(1)	(2)	";

(c) after note 6 of the notes for guidance in completing Form 43 insert-

" **6A.** If the order is to provide that real burdens or servitudes affecting the land to be acquired are not to be extinguished or are to be varied or the development management scheme disapplied on registration of a conveyance in implement of the order this should be specified in the Schedule to the order and paragraph 5 should be included in appropriate form.";

(d) after note 8 of the notes for guidance in completing Form 43 insert-

" **9.** Where the order makes provision in accordance with section 106 of the Title Conditions (Scotland) Act 2003 that real burdens or servitudes are not to be extinguished or any development management scheme is not to be disapplied, describe the effect of such provisions.".

(3) In Form 44 set out in the Schedule to the Regulations (form of advertisement of the making of a compulsory purchase order for a housing action area for demolition)-

(a) at the end of the second paragraph insert-

" ^{3A}If the order is confirmed, a conveyance registered in implement of the order may **[vary or extinguish rights to enforce*

real burdens and servitudes affecting the land] *[disapply a development management scheme affecting the land]";

(b) after note 3 of the notes for guidance in completing Form 44 insert-

" **3A.** Include these words in appropriate form where the order may vary or extinguish rights to enforce real burdens or servitudes or may disapply a development management scheme."

(4) In Form 45 set out in the Schedule to the Regulations (form of notice to owners, lessees and occupiers of the making of a compulsory purchase order for a housing action area for demolition)-

(a) for the words "owners, lessees and occupiers" occurring in the title of Form 45 substitute "owners, lessees, occupiers, holders of personal real burdens, benefited proprietors and owners' association";

(b) after the word "[occupier]" in the second paragraph of Form 45 insert "4A [holder of a personal real burden] [benefited proprietor] [owners' association]";

(c) at the end of the third paragraph insert-

" 4B If the order is confirmed, a conveyance registered in implement of the order may *[vary or extinguish rights to enforce real burdens and servitudes affecting the land] *[disapply a development management scheme affecting the land]";

(d) after note 4 of the notes for guidance in completing Form 45 insert-

" **4A.** The terms "holder of a personal real burden", "benefited proprietor" and "owners' association" refer respectively to a person on whom a notice is to be served in accordance with paragraph 3(b)(ii), (iii) and (iv), as the case may be, of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 as amended by section 109(2) of the Title Conditions (Scotland) Act 2003.

4B. Include these words in appropriate form where the order may vary or extinguish rights to enforce real burdens or servitudes or may disapply a development management scheme."

(5) In Form 53 set out in the Schedule to the Regulations (form of compulsory purchase order for a housing action area for improvement)-

(a) after article 4 insert-

" 6A[5. The registration of a conveyance, as defined in section 106(5) of the Title Conditions (Scotland) Act 2003, in implement of this order [shall not extinguish the real burdens and servitudes] [shall not disapply the development management scheme] described in the [Part III of the]

Schedule hereto [but shall vary the real burdens and servitudes as specified in that Schedule] [but shall extinguish all rights to enforce such real burdens or servitudes other than the rights of those benefited proprietors and holders of personal real burdens specified in that Schedule] [shall extinguish the real burdens and servitudes described in [Part III of] the Schedule hereto only in relation to those parts of the burdened property specified in that [Part of the] Schedule.];

(b) after Part II of the Schedule to Form 53 insert-

" **[Part III - Effect of order on real burdens and servitudes/development management scheme.]*

Number on Map	Address of property	*[Preservation/variation of [rights to enforce] real burdens or servitudes] [Preservation of development management scheme.] ⁹
(1)	(2)	";

(c) after note 6 of the notes for guidance in completing Form 53 insert-

" **6A.** If the order is to provide that real burdens or servitudes affecting the land to be acquired are not to be extinguished or are to be varied or the development management scheme disapplied on registration of a conveyance in implement of the order this should be specified in the Schedule to the order and paragraph 5 should be included in appropriate form.";

(d) after note 8 of the notes for guidance in completing Form 53 insert-

" **9.** Where the order makes provision in accordance with section 106 of the Title Conditions (Scotland) Act 2003 that real burdens or servitudes are not to be extinguished or any development management scheme is not to be disapplied, describe the effect of such provisions.".

(6) In Form 54 set out in the Schedule to the Regulations (form of advertisement of the making of a compulsory purchase order for a housing action area for improvement)-

(a) at the end of the second paragraph insert-

" ^{3A}If the order is confirmed, a conveyance registered in implement of the order may *[vary or extinguish rights to enforce real burdens and servitudes affecting the land] *[disapply a development management scheme affecting the land]";

(b) after note 3 of the notes for guidance in completing Form 54 insert-

" **3A.** Include these words in appropriate form where the order may vary or extinguish rights to enforce real burdens or servitudes or may disapply a development management scheme."

(7) In Form 55 set out in the Schedule to the Regulations (form of notice to owners, lessees and occupiers of the making of a compulsory purchase order for a housing action area for improvement)-

(a) for the words "owners, lessees and occupiers" occurring in the title of Form 55 substitute "owners, lessees, occupiers, holders of personal real burdens, benefited proprietors and owners' association";

(b) after the word "[occupier]" in the second paragraph of Form 55 insert "^{4A} [holder of a personal real burden] [benefited proprietor] [owners' association]";

(c) at the end of the third paragraph insert-

" **4B** If the order is confirmed, a conveyance registered in implement of the order may *[vary or extinguish rights to enforce real burdens and servitudes affecting the land] *[disapply a development management scheme affecting the land]";

(d) after note 4 of the notes for guidance in completing Form 55 insert-

" **4A.** The terms "holder of a personal real burden", "benefited proprietor" and "owners' association" refer respectively to a person on whom a notice is to be served in accordance with paragraph 3(b)(ii), (iii) and (iv), as the case may be, of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 as amended by section 109(2) of the Title Conditions (Scotland) Act 2003.

4B. Include these words in appropriate form where the order may vary or extinguish rights to enforce real burdens or servitudes or may disapply a development management scheme."

(8) In Form 63 set out in the Schedule to the Regulations (form of compulsory purchase order for a housing action area for demolition and improvement)-

(a) after article 4 insert-

" **6A5.** The registration of a conveyance, as defined in section 106(5) of the Title Conditions (Scotland) Act 2003, in implement of this order [shall not extinguish the real burdens and servitudes] [shall not disapply the development management scheme] described in the [Part IV of the] Schedule hereto [but shall vary the real burdens and servitudes as

specified in that Schedule] [but shall extinguish all rights to enforce such real burdens or servitudes other than the rights of those benefited proprietors and holders of personal real burdens specified in that Schedule] [shall extinguish the real burdens and servitudes described in [Part IV of] the Schedule hereto only in relation to those parts of the burdened property specified in that [Part of the] Schedule.].";

(b) after Part III of the Schedule to Form 63 insert-

" **[Part IV - Effect of order on real burdens and servitudes/development management scheme.]*

Number on Map	Address of property	*[Preservation/variation of [rights to enforce] real burdens or servitudes] [Preservation of development management scheme.] ⁹
(1)	(2)	";

(c) after note 6 of the notes for guidance in completing Form 63 insert-

" **6A.** If the order is to provide that real burdens or servitudes affecting the land to be acquired are not to be extinguished or are to be varied or the development management scheme disapplied on registration of a conveyance in implement of the order this should be specified in the Schedule to the order and paragraph 5 should be included in appropriate form.";

(d) after note 8 of the notes for guidance in completing Form 63 insert-

" **9.** Where the order makes provision in accordance with section 106 of the Title Conditions (Scotland) Act 2003 that real burdens or servitudes are not to be extinguished or any development management scheme is not to be disapplied, describe the effect of such provisions.".

(9) In Form 64 set out in the Schedule to the Regulations (form of advertisement of the making of a compulsory purchase order for a housing action area for demolition and improvement)-

(a) at the end of the second paragraph insert-

" ^{3A}If the order is confirmed, a conveyance registered in implement of the order may *[vary or extinguish rights to enforce real burdens and servitudes affecting the land] *[disapply a development management scheme affecting the land]";

(b) after note 3 of the notes for guidance in completing Form 64 insert-

" **3A.** Include these words in appropriate form where the order may vary or extinguish rights to enforce real burdens or servitudes or may disapply a development management scheme."

(10) In Form 65 set out in the Schedule to the Regulations (form of notice to owners, lessees and occupiers of the making of a compulsory purchase order for a housing action area for demolition and improvement)-

(a) for the words "owners, lessees and occupiers" occurring in the title of Form 65 substitute "owners, lessees, occupiers, holders of personal real burdens, benefited proprietors and owners' association";

(b) after the word "[occupier]" in the second paragraph of Form 65 insert "^{4A} [holder of a personal real burden] [benefited proprietor] [owners' association]";

(c) at the end of the third paragraph insert-

" ^{4B}If the order is confirmed, a conveyance registered in implement of the order may *[vary or extinguish rights to enforce real burdens and servitudes affecting the land] *[disapply a development management scheme affecting the land]";

(d) after note 4 of the notes for guidance in completing Form 65 insert-

" **4A.** The terms "holder of a personal real burden", "benefited proprietor" and "owners' association" refer respectively to a person on whom a notice is to be served in accordance with paragraph 3(b)(ii), (iii) and (iv), as the case may be, of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 as amended by section 109(2) of the Title Conditions (Scotland) Act 2003.

4B. Include these words in appropriate form where the order may vary or extinguish rights to enforce real burdens or servitudes or may disapply a development management scheme."

(11) In Form 67 set out in the Schedule to the Regulations (form of compulsory purchase order for land surrounded by or adjoining a housing action area only)-

(a) in article 2 for the words "the Schedule hereto" substitute "[Part I of the Schedule hereto]";

(b) after article 3 insert-

" ^{6A}4. [The registration of a conveyance, as defined in section 106(5) of the Title Conditions (Scotland) Act 2003, in implement of this order [shall not extinguish the real burdens and servitudes] [shall not disapply the development management scheme] described in the [Part II of the]

Schedule hereto [but shall vary the real burdens and servitudes as specified in that Schedule] [but shall extinguish all rights to enforce such real burdens or servitudes other than the rights of those benefited proprietors and holders of personal real burdens specified in that Schedule] [shall extinguish the real burdens and servitudes described in [Part II of] the Schedule hereto only in relation to those parts of the burdened property specified in that [Part of the] Schedule.];

(c) in the Schedule for the word "SCHEDULE" substitute-

" SCHEDULE

*[PART I]";

(d) after the Schedule to Form 67 add-

" **[Part II - Effect of order on real burdens and servitudes/development management scheme.]*

Number on Map	Address of property	*[Preservation/variation of [rights to enforce] real burdens or servitudes] [Preservation of development management scheme.] ⁸
(1)	(2)	";

(e) after note 6 of the notes for guidance in completing Form 67 insert-

" **6A.** If the order is to provide that real burdens or servitudes affecting the land to be acquired are not to be extinguished or are to be varied or the development management scheme disapplied on registration of a conveyance in implement of the order this should be specified in a Schedule to the order and paragraph 4 should be included in appropriate form.";

(f) after note 7 of the notes for guidance in completing Form 67 insert-

" **8.** Where the order makes provision in accordance with section 106 of the Title Conditions (Scotland) Act 2003 that real burdens or servitudes are not to be extinguished or any development management scheme is not to be disapplied, describe the effect of such provisions.".

(12) In Form 68 set out in the Schedule to the Regulations (form of

advertisement of the making of a compulsory purchase order for land surrounded by or adjoining a housing action area only)-

(a) at the end of the second paragraph insert-

" 4A If the order is confirmed, a conveyance registered in implement of the order may *[vary or extinguish rights to enforce real burdens and servitudes affecting the land] *[disapply a development management scheme affecting the land]";

(b) after note 4 of the notes for guidance in completing Form 68 insert-

" 4A. Include these words in appropriate form where the order may vary or extinguish rights to enforce real burdens or servitudes or may disapply a development management scheme."

(13) In Form 69 set out in the Schedule to the Regulations (form of notice to owners, lessees and occupiers of the making of a compulsory purchase order for land surrounded by or adjoining a housing action area only)-

(a) for the words "owners, lessees and occupiers" occurring in the title of Form 69 substitute "owners, lessees, occupiers, holders of personal real burdens, benefited proprietors and owners' association";

(b) after the word "[occupier]" in the second paragraph of Form 69 insert-

" 5A [holder of a personal real burden] [benefited proprietor] [owners' association]";

(c) at the end of the third paragraph insert-

" 5B If the order is confirmed, a conveyance registered in implement of the order may *[vary or extinguish rights to enforce real burdens and servitudes affecting the land] *[disapply a development management scheme affecting the land]";

(d) after note 5 of the notes for guidance in completing Form 69 insert-

" 5A. The terms "holder of a personal real burden", "benefited proprietor" and "owners' association" refer respectively to a person on whom a notice is to be served in accordance with paragraph 3(b)(ii), (iii) and (iv), as the case may be, of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 as amended by section 109(2) of the Title Conditions (Scotland) Act 2003.

5B. Include these words in appropriate form where the order may vary or extinguish rights to enforce real burdens or servitudes or may disapply a development management scheme."

The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984

17. - (1) The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984[6] are amended as follows.

(2) At the end of regulation 6 add-

" or to advertisements displayed under-

(a) section 21(2)(b), 36(2)(b) or 107(8)(c) of the Title Conditions (Scotland) Act 2003;

(b) paragraph 3A(c) of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;

(c) paragraph 2(1B)(c) of Schedule 5 to the Forestry Act 1967".

(3) In Schedule 4, at the end of Class III-

(a) in the column headed "description of advertisement" add-

" (7) Advertisements displayed under-

(a) section 21(2)(b), 36(2)(b) or 107(8)(c) of the Title Conditions (Scotland) Act 2003;

(b) paragraph 3A(c) of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;

(c) paragraph 2(1B)(c) of Schedule 5 to the Forestry Act 1967".

(b) in the column headed "maximum height of letters or figures" add-

" 1 centimetre"

(c) in the column headed "maximum height above ground level of highest part of advertisement" add-

" 2 metres"

The Compulsory Purchase by Public Authorities (Inquiries Procedure) (Scotland) Rules 1998

18. - (1) The Compulsory Purchase by Public Authorities (Inquiries Procedure) (Scotland) Rules 1998[7] shall be amended as follows.

(2) In rule 3 after the definition of "acquiring authority" insert-

" "benefited proprietor" means an owner of land on whom a notice is to be served in accordance with paragraph 3(b)(iii) of the First Schedule to the Act."

(3) In rule 3 after the definition of "document" insert-

" "holder of a personal real burden" means a person on whom a notice is to be served in accordance with paragraph 3(b)(ii) of the First Schedule to the Act."

(4) In rule 3 after the definition of "outline statement" insert-

" "owners' association" means an owners' association under a development management scheme (as defined in section 71(3) of the Title Conditions (Scotland) Act 2003 on which a notice is to be served in accordance with paragraph 3(b)(iv) of the First Schedule to the Act."

(5) In rule 3 for the definition of "statutory objector" substitute-

" "statutory objector" means an owner, lessee, or occupier of the land or any part thereof or a benefited proprietor, holder of a personal real burden or owners' association, who, being entitled to be served with notice of the making of the order, has duly objected to the making thereof in accordance with the provisions of the First Schedule to the Act and whose objection has not been withdrawn, is not the subject of an undertaking given by the acquiring authority under paragraph 4(2A) of the First Schedule to the Act, or whose objection has not been disregarded under-

(a) paragraph 4(4) of that Schedule; or

(b) section 200(1) of the Town and Country Planning (Scotland) Act 1997."

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes modifications of the following enactments which appear to be necessary or expedient in consequence of the Title Conditions (Scotland) Act 2003 (asp 9) ("the 2003 Act").

Lands Clauses Consolidation (Scotland) Act 1845

Schedule A to this Act contains a form of "statutory conveyance" which may be used in compulsory purchase procedure. Section 107 of the 2003 Act allows certain burdens etc to be saved if they are referred to in the conveyance. The amendment provides a prompt about this in the form of conveyance.

Abolition of Feudal Tenure etc (Scotland) Act 2000

The words at the end of section 20(3) are omitted so that the savings provisions of section 17 will have effect even if the burden is not successfully reallocated under section 20.

The amendment of section 20(7) provides for an order by the Lands Tribunal refusing an application to save a feudal real burden. The effect of such an order is that the transitional period, which prolongs the superior's right to enforce the burden, is prevented from operating, if the order is registered before the appointed day, or is brought to an end, if the order is registered on or after the appointed day.

Section 32 is omitted from the commencement provisions as it was repealed by the 2003 Act.

Title Conditions (Scotland) Act 2003

The amendment to section 37(2)(b) allows burdens to be identified by reference to a deed recorded in the Register of Sasines or registered in the Land Register of Scotland rather than set out at length.

In section 90(6), although compensation is potentially available to a benefited proprietor if there is only a partial renewal of the burden, the Lands Tribunal order in such a case would be partially discharging not renewing the burden. The reference to "renewing" is therefore removed. Compensation may be available under section 90(6) when a title conditions is varied. The additional reference to "variation" of a title condition in subsection (7) of section 90 is to make subsection (7) consistent with subsection (6).

Section 90(8A) allows an order of the Lands Tribunal to impose new burdens, as provided in section 73(2), when a development management scheme is disapplied. There are consequential amendments to sections 4(7) to confirm that burdens can be created in this way and 104(3) which provides for the registration of such orders. The amendment of section 99(4)(a) adds grounds for rejecting the disapplication of a development management scheme on the basis of the burdens imposed by the deed of disapplication.

Section 93 provides that the Lands Tribunal has to notify certain applications to the holder of the title condition i.e. the person who has right to it. The amendment of section 122(1) changes the definition of "holder" to make clear that this does not include the persons entitled to enforce a burden under section 8(2)(a), (b) or (c) such as tenants, liferenters and non-entitled spouses.

The amendment of section 106 is a saving provision which means that section 106 will only affect compulsory purchase orders which have not already reached the procedural stage of having been notified as required under the previous law.

The amendment of section 109 supplements the changes made by the Act to the procedures for giving notice to benefited proprietors and holders of personal real burdens on compulsory purchase. The new subsections (4A) and (4B) inserted into section 109 provide that notices to be served on the holders of personal real burdens and benefited proprietors following confirmation of a compulsory purchase order are to be served in the same manner as the notices of making of a compulsory purchase order. The amendment to a new subparagraph 3A(c) to the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 inserted by section 109 removes the requirement to affix a conspicuous notice to the burdened property. Paragraph 14 makes the same changes to the amendments made to the Forestry Act 1967 by section 110.

The Housing (Forms) (Scotland) Regulations 1974

Paragraph 16 of Part II of the Schedule make changes to forms of compulsory

purchase order and notices set out in the Regulations. The changes are as a consequence of changes to compulsory purchase procedure and reflect the amendment made to the notification requirements set out in paragraph 3 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 by section 109 of the 2003 Act.

The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984

Paragraph 17 of Part II of the Schedule amends the Town and Country Planning (Control of Advertisement) (Scotland) Regulations 1984 to add notices affixed to lampposts pursuant to the 2003 Act to the classes of advertisements which are deemed under regulation 10 to have consent for their display. Notices may be affixed to lampposts under sections 21(2)(b), 36(2)(b) or 107(8)(c) of the 2003 Act and under paragraph 3A(c) of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and paragraph 2(1B)(c) of Schedule 5 to the Forestry Act 1967. These Acts were amended by sections 109 and 110 respectively of the 2003 Act. Paragraph 17 also amends regulation 6 to bring the standard conditions set out in Schedule 1 to the Regulations in line with the provisions of the 2003 Act.

The Compulsory Purchase by Public Authorities (Inquiries Procedure) (Scotland) Rules 1998

Paragraph 18 of Part II of the Schedule amends the Compulsory Purchase by Public Authorities (Inquiries Procedure)(Scotland) Rules 1998 to change the definition of statutory objector to bring this in line with the class of persons to be notified of a compulsory purchase order following the changes made to the notification procedure by section 109 of the 2003 Act.

Notes:

[1] 2003 asp 9.[back](#)

[2] 1845 c.19.[back](#)

[3] 2000 asp 5.[back](#)

[4] 2003 asp 9.[back](#)

[5] S.I. 1974/1982.[back](#)

[6] S.I. 1984/467.[back](#)

[7] S.I. 1998/2313.[back](#)

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