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

St Andrew's House,Edinburgh
21st October 2003

Authorised to sign by the Scottish Ministers

(**1**) 2003 asp 9.

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–

(**2**) 1845 c. 19.
(**3**) 2000 asp 5.
(**4**) 2003 asp 9.

"(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] |
|---|---|---|

(**5**) S.I.1974/1982.

[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.".