

Applications for registration of deeds constituting, or intending to constitute, real burdens



This Update gives notice of new procedures for the consideration of applications for registration in the Land Register that fall within the ambit of section 4 of the Title Conditions (Scotland) Act 2003 ('the 2003 Act'). These procedures will be introduced with effect from 28 July 2008.

Background

Section 4 of the 2003 Act sets a general rule that an application for registration of a deed which sets out to create new real burdens ('the constitutive deed') should be registered against both the burdened and the benefited properties (a process that is often described as 'dual registration'). Dual registration must be applied for simultaneously against all the affected properties.

However, there are circumstances in which an application for registration of a deed which constitutes (or appears to constitute) new burdens may be correctly presented for registration against the burdened property only. These are:-

I. where a deed creates burdens solely in reliance on the transitional provisions of section 53 of the 2003 Act, the requirement for the nomination of, and registration against, a benefited property is removed;

II. where the deed narrates that the burdens are to be constituted as personal real burdens for which there is no benefited property.

Current registration procedures

Because there are many deeds constituting new real burdens that do not require to be dual registered our registration practice has been to accept applications for registration relating to such deeds onto the Land Register application record, provided the application meets basic generic registration requirements. When the application subsequently undergoes its full title examination we check to ensure that the burdens have been properly constituted and also check to ensure that any necessary dual applications have been made. However a review that we have carried out into the operation of dual registration has revealed that we do on occasion continue to receive applications for which the necessary dual registration has not been applied for. In these circumstances, the consequence of failure to apply for dual registration will result in the application being withdrawn or rejected as the real burdens cannot be created by registration at this stage. We recognise that rejection or withdrawal of an application for registration some weeks or months after it has been

presented for registration may cause practical difficulties for the applicants and their solicitors.

Our review also highlighted a further issue. On occasion a deed which seeks to constitute new real burdens will fail to satisfy the technical requirements imposed by section 4 of the 2003 Act. For instance the benefited property may not be nominated or sufficiently identified for the purposes of registration or the term "real burden" or a permitted statutory equivalent may not be employed in the deed. In such instances the deed fails to constitute real burdens. This can result in the need for a fresh deed to be prepared.

New registration procedures

Following discussion and agreement with the Joint Consultative Committee (of the Law Society of Scotland and the Keeper of the Registers of Scotland) we propose to carry out a preliminary examination upon receipt of an application for registration of a deed that purports to constitute new real burdens to identify those applications in which:-

- the appropriate application forms for dual registration against the benefited and burdened properties described in the constitutive deed are not provided; and/or

- the appropriate registration fees for dual registration are not tendered.

The purpose of this up-front examination is to afford solicitors the opportunity to remedy applications for registration that do not meet the statutory requirements at an early stage. Accordingly, in the event that a deed which purports to constitute new real burdens is presented for registration in the Land Register without an accompanying application for dual registration (or Sasine recording), it will be rejected forthwith unless falling within one of the categories listed below:-

1. the deed is a disposition granted by a local authority or housing association. In such cases the burdens are likely to fall under section 53 of the 2003 Act. Here section 53(3A) of the 2003 Act modifies section 4 to remove the requirement for the nomination of, and registration against, a benefited property. It should be noted that such deeds may be rejected later in the registration process if, upon detailed examination, it emerges that section 53 is not applicable. Note: that if a deed which would otherwise fall into this category constitutes any new servitude, dual registration is necessary to comply with section 75 of the 2003 Act;

2. where either the additional information field of the registration application form, or a covering letter to the application, gives a valid reason for not presenting the application for dual registration - for example that, although the deed is not granted by a

local authority or housing association, the burdens form part of a section 53 common scheme.

In the event that the examination at intake stage reveals that a deed presented for dual registration fails to constitute real burdens by reason of technical defects, the relevant applications for registration will be rejected to afford the parties the opportunity to correct the defect. This will not apply where the deed has other effects (for example it constitutes servitudes) and it is requested that it be registered as it stands, notwithstanding that the intended burdens will not be constituted by the registration. Such a request may be made in the additional information field of the registration application form, or in a covering letter.

The requirement for double or multiple registrations can be avoided by using a single deed to create real burdens, for example a Deed of Conditions. If registered in advance of the sale of individual units, registration will often only be required in respect of a single title. This will incur a single registration fee of £30.

[Further information](#)

All previous Registers Updates are available on our website www.ros.gov.uk/updates. Information on registration and recording fees for dual registration applications can be found in the Fees in the Registers of Scotland Order 1995 as amended which is available on

our website at www.ros.gov.uk/publications/feesandcharges. Our Pre-registration Enquiries section will be pleased to offer registration guidance to solicitors on specific matters of concern in connection with an application for registration affected by the issues raised in this update. This service is free of charge.

Contact Pre-registration Enquiries at:

By letter:
Registers of Scotland
Meadowbank House
153 London Road
Edinburgh EH8 7AU
LP 55 Edinburgh 5
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By phone:
0845 607 0163 (Local rate);
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