



Scottish Law Commission

promoting law reform

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BRINGING CLARITY TO WHO CAN ENFORCE TITLE CONDITIONS

DISCUSSION PAPER ON SECTION 53 OF THE TITLE CONDITIONS (SCOTLAND) ACT 2003

The Scottish Law Commission today publishes its Discussion Paper on Section 53 of the Title Conditions (Scotland) Act 2003.

The 2003 Act was one of a series of enactments that together abolished the feudal system of land ownership on 28 November 2004.

Section 53 regulates the rights of neighbouring owners to enforce real burdens in most property developments which pre-date feudal abolition.

Real burdens are a type of title condition which impose obligations on owners, such as to maintain their properties or not to carry out further building. They affect both residential and commercial property.

For section 53 to apply there must be a “common scheme” of real burdens imposed on “related properties”. But it is unclear when these requirements will be met in practice. Section 53 therefore has been the subject of extensive criticism. It is costly for owners to try to identify who may hold rights of enforcement when a real burden limits development.

This Discussion Paper reviews the difficulties with section 53 and suggests how it might be reformed. The views of consultees are sought.

Dr Andrew Steven, the lead Commissioner for this project, said:

“This is an important area of law which affects many property developments in Scotland, such as housing estates and business parks. Owners require certainty as to the title conditions affecting their properties. In this regard, reform of section 53 is much needed.”

The consultation period will run until 31 August 2018.

Following consultation, the Commission will assess consultees' views and commence work towards publication of a Report.

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Pentland, a Court of Session judge. The other Commissioners are Caroline S Drummond, David E L Johnston QC and Dr Andrew J M Steven. The Chief Executive is Malcolm McMillan.
2. Further information can be obtained by contacting Andy Crawley, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131; email info@scotlawcom.gsi.gov.uk).
3. The paper will be available on our website at <https://www.scotlawcom.gov.uk> as early as possible on 11 May 2018.