

# TITLE CONDITIONS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4: Transitional: Implied Rights of Enforcement**

##### ***Section 54: Sheltered housing***

250. This section creates enforcement rights in relation to burdens imposed on sheltered and retirement housing. It only applies where before the appointed day burdens have been imposed under a common scheme on all the units in a sheltered or retirement development (defined by subsection (3)) other than any unit used in ‘some special way’. A unit used in a special way would typically be a unit used as a warden’s flat, or a unit used for guest accommodation. Although not subject to the burdens, such units are given the status of benefited properties and, by section 26(2)(b), are part of the ‘community’. Burdens falling under section 54 are specifically stated to be community burdens (section 25(2)). The section also makes special provision with regard to a number of core elements that give this sort of housing its special character. The provisions on community burdens will operate for sheltered or retirement housing if burdens have been imposed under a common scheme on all the units (other than any unit used in a special way) within a sheltered or retirement housing development. Where this is the case, each property in a scheme will be both a benefited and a burdened property in respect of the real burdens. This means that the same conditions will apply to each property and each owner will be able to enforce those conditions against other owners.
251. The reference to section 122(2)(ii) in *subsection (2)* ensures that obligations to maintain or reinstate assumed by a local or other public authority are not real burdens affected by section 54.
252. *Subsection (3)* defines sheltered or retirement housing developments. The definition places its emphasis on special facilities and features for the elderly, disabled or infirm.
253. *Subsection (4)* defines a core burden. This term is used in subsection (5). The “core burdens” in a sheltered or retirement housing development are burdens which regulate the use, maintenance, reinstatement or management of any facility or service which makes the sheltered or retirement housing development particularly suitable for occupation by elderly people (or by people who are disabled or infirm or in some other way vulnerable) or which regulate facilities substantially different from those of ordinary dwellinghouses. In practice these features and facilities are likely to include the provision of a warden service, an emergency alarm system and safety features such as grab rails and ramps. Burdens which regulate the provision of these services or facilities are given special protection.
254. *Subsection (5)* specifies the protections for core burdens. Paragraph (a) modifies section 28 of the Act. The relevant paragraphs referred to in section 28(1) allow a majority to confer powers on a manager (and to revoke those powers). For these powers to be used in a sheltered or retirement housing development will require a majority of two thirds of the units. Sub-paragraph (ii) ensures that it will not be possible to use section 28 to confer on a manager the power to discharge any burdens in a sheltered or

*These notes relate to the Title Conditions (Scotland) Act  
2003 (asp 9) which received Royal Assent on 3 April 2003*

retirement housing development and that the manager may only be given the authority to vary non-core burdens.

255. Paragraph (b) of subsection (5) provides that it will not be possible to remove the core burdens in sheltered or retirement housing by the default majority rule provisions in section 33 of the Act. The core burdens are protected by increasing the majority required to make changes to burdens affecting them. It is not possible to discharge any “core burden” by majority discharge under sections 33(2). The owners of a majority of two thirds of the units, as opposed to a bare majority, are required to sign any majority variation of a core burden under these provisions. Section 33(2)(a) generally provides that in the case where one person may own a sufficiently large number of units to be able to sign a deed of variation then the signature of the owners of at least one other unit must also be obtained. Before any deed of variation or discharge under section 33 is signed in respect of a sheltered or retirement housing development there must be consultation as provided for in section 55.
256. Paragraph (c) of subsection (5) stipulates that burdens relating to age restrictions should not be capable of majority discharge or variation under the provisions in section 33(2). Such a restriction might be to the effect that no person under the age of 60 could reside in the complex. This provision applies to burdens created in constitutive deeds registered after the appointed day as well as to those in constitutive deeds registered before the appointed day
257. *Subsection (6)* ensures that no rights of pre-emption or redemption will be conferred under the section. These rights are only exercisable by one benefited proprietor and should not be conferred generally. There are provisions in both section 18 and section 18A of the 2000 Act (section 18A is inserted by section 114(2)) which allow a feudal superior to preserve rights of pre-emption or redemption.
258. The reference in *subsection (6)* to section 57 prevents the creation of enforcement rights by the section having the result that rights of enforcement which have been extinguished before the appointed day are resurrected on the appointed day. Section 57(1) ensures that no lost rights revive as a result of sections 52 to 54 and section 56. Section 54 is subject to section 57(3). This makes it clear that where section 54 confers a new right of enforcement on a benefited property which did not exist before the appointed day this will not confer a right to enforce the burden in respect of anything done or omitted to be done in contravention of the burden before the appointed day.