

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Transitional: Implied Rights of Enforcement

Section 56: Facility burdens and service burdens

264. This section is based on, and replaces, section 23 of the 2000 Act (which is repealed by schedule 15). It extends the rule introduced by section 23 of the 2000 Act from feudal to non-feudal burdens. The meaning of 'facility burden' and 'service burden' is given in section 122(1). The broad effect of section 56 is that facility and service burdens are enforceable by the owners of those properties which benefit from the facility or service in question. By contrast to sections 52 to 54, there is no requirement that the benefited properties be subject to like burdens. The burdens need not have been imposed under a common scheme.
265. The reference in subsection (2) 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 56 is subject to section 57(3). This makes it clear that where section 56 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. Subsection (2) also makes it clear that subsection (1) does not confer on any benefited property the right to enforce a manager burden. Manager burdens are personal real burdens and as such are not tied to individual properties. Furthermore by their nature they are exercisable by a specific individual rather than a number of benefited proprietors.