

# TITLE CONDITIONS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 9: Powers of the Lands Tribunal**

##### *Section 104: Taking effect of orders of Lands Tribunal etc.*

402. Once a Tribunal order has taken effect (other than an order under section 90(1)(a)(ii) in relation to validity etc), the order may be registered. It is only on registration that the title condition is affected in the manner provided for in the order. An order declaring whether a condition is valid under section 90(1)(a)(ii) is not registrable.
403. Section 90 permits the Lands Tribunal to vary or discharge a ‘purported title condition’ so that it will be possible for an applicant to remove an invalid burden. This enables the Tribunal to discharge an obligation without first having to determine whether or not it is a valid real burden. If a burden was not valid (i.e. it is a purported burden) it could still be valid and enforceable as a contract. The contractual relationship would only cease when the property changed hands. *Subsection (4)* makes clear that a discharge by the Tribunal of a purported real burden has no effect as regards any incidental contractual liability even if the basis for the contractual liability is not set out in any other document.