



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 1

REAL BURDENS: GENERAL

Duration, enforceability and liability

11 Affirmative burdens: shared liability

- (1) If a burdened property as respects which an affirmative burden is created is divided (whether before or after the appointed day) into two or more parts then, subject to subsections (2) and (4) below, the owners of the parts—
- (a) are severally liable in respect of the burden; and
 - (b) as between (or among) themselves, are liable in the proportions which the areas of their respective parts bear to the area of the burdened property.

- (2) “Part” in subsection (1) above does not include a part to which the affirmative burden cannot relate.

- (3) In the application of subsection (1) above to parts which are flats in a tenement, the reference in paragraph (b) of that subsection to the areas of the respective parts shall be construed as a reference to the floor areas of the respective flats.

- [^{F1}(3A) For the purposes of subsection (3) above, the floor area of a flat is calculated by measuring the total floor area (including the area occupied by any internal wall or other internal dividing structure) within its boundaries; but no account shall be taken of any pertinents or any of the following parts of a flat—

- (a) a balcony; and
- (b) except where it is used for any purpose other than storage, a loft or basement.]

- (4) Paragraph (a) of subsection (1) above shall not apply if, in the constitutive deed, it is provided that liability as between (or among) the owners of the parts shall be otherwise than is provided for in that paragraph; and paragraph (b) of that subsection shall not apply if, in the constitutive deed or in the conveyance effecting the division, it is provided that liability as between (or among) them shall be otherwise than is provided for in that paragraph.

Changes to legislation: There are currently no known outstanding effects for the
Title Conditions (Scotland) Act 2003, Section 11. (See end of Document for details)

- (5) If two or more persons own in common a burdened property as respects which an affirmative burden is created then, unless the constitutive deed otherwise provides—
- (a) they are severally liable in respect of the burden; and
 - (b) as between (or among) themselves, they are liable in the proportions in which they own the property.

Textual Amendments

- F1** S. 11(3A) inserted (23.10.2004) by [Tenements \(Scotland\) Act 2004 \(asp 11\)](#), ss. 25, 34(3), [Sch. 4 para. 6](#) (with s. 33)

Modifications etc. (not altering text)

- C1** Ss. 2, 3, 5, 10, 11, 13, 14, 16, 18, 59 to 61, 67, 70 and 105 applied (1.6.2009) by [The Title Conditions \(Scotland\) Act 2003 \(Development Management Scheme\) Order 2009 \(S.I. 2009/729\)](#), [art. 5\(1\)\(3\)\(4\)](#)

Commencement Information

- I1** S. 11 wholly in force; s. 11 in force for certain purposes at 4.4.2003 see [s. 129\(2\)\(5\)](#); s. 11 otherwise in force at 28.11.2004 by [S.S.I. 2003/456](#), [art. 2](#)

Changes to legislation:

There are currently no known outstanding effects for the Title Conditions (Scotland) Act 2003, Section 11.