

# TITLE CONDITIONS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1: Real Burdens: General

##### *Section 12: Division of a benefited property*

81. Sections 12 and 13 are concerned with division of the properties.
82. If a benefited property is divided, the current law confers on each part the status of an independent benefited property. The result is an, often unwelcome, multiplication of benefited properties. *Subsection (1)* changes the rule in respect of divisions of property made by a deed registered on or after the appointed day. If A divides his land and conveys part to B, then only the part retained by A will be the benefited property – unless the conveyance provides otherwise. It will be possible for the break-off deed to provide either that both properties or just the part being sold will be benefited properties. *Subsection (1)* will apply again if the new, reduced, benefited property comes to be divided at a later date.
83. Sometimes it may be desirable to provide that certain burdens are enforceable by the owner of the retained land and certain others by the owner of the conveyed land. *Subsection (2)* makes clear that this is permissible.
84. Paragraphs (a) and (b) of *subsection (3)* explain the method by which contrary provision is made. Paragraph (c) restricts choice in the case of pre-emptions and other options. In such a case there is only to be one benefited property. If the default rule (that the retained land is to be the benefited property) is disapplied, the only alternative provision which may be made is that the conveyed property is to be the benefited property.
85. *Subsection (4)* disapplies these rules in certain cases where they would be inappropriate. Sections 52 to 54 and 56 and 57 provide special rules for the identification of benefited properties in relation to common scheme burdens created before the appointed day. Paragraph (a) ensures that the rules operate regardless of division. Community burdens are designed for the benefit of the entire community, regardless of the number of units that it may be divided into. In a community each property is both a burdened and a benefited property. Paragraph (b) follows the principle that it is undesirable that any unit in the community should be deprived of enforcement rights. If the burdens are set out in a deed of conditions, each sale will amount to a division of benefited property and so, under the above rules, the part conveyed would cease to be a benefited property. Paragraph (c) disapplies these rules so that in each sale there is no requirement to make the special provision referred to in *subsection (1)*. Paragraph (c) refers to a “common deed of conditions”. This is not a “deed of conditions” as defined by section 122(1) and could be a constitutive deed registered after the appointed day which sets out the terms of burdens to be imposed on a number of properties.