

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11: Savings, Transitional and General

Schedule 14: Minor and consequential amendments

Registration of Leases (Scotland) Act 1857 (c.26).

549. Following the repeal of section 32 of the Conveyancing (Scotland) Act 1874 and section 17 of the Land Registration (Scotland) Act 1979 by schedule 15 of the Act, this amendment provides an alternative mechanism for creating conditions or stipulations which may be specified in an assignation under section 3(2) of the 1857 Act and for postponing the date of effectiveness of such conditions or stipulations.

Titles to Land Consolidation (Scotland) Act 1868 (c.101)

550. This amendment ensures consistency with the amendment to section 8 of the 1868 Act made in schedule 12 paragraph 8(4)(a) of the 2000 Act.

Conveyancing (Scotland) Act 1924 (c.27).

551. Following the repeal of section 40(3) of this Act by schedule 15, this amendment to section 40(2) makes it clear that a heritable creditor can create real burdens after the appointed day by whatever methods may be competent.

Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35).

552. This amendment is made necessary by (i) the repeal by schedule 15 of the Act of sections 1 and 2 of the 1970 Act, and (ii) the consequential repeal, also by schedule 15, of schedule 12 paragraph 30(6)(d)(ii) of the 2000 Act (which replaced the definition of 'interest in land' in section 9 of the 1970 Act with a definition of 'real right in land' as defined in sections 1 and 2 of the 1970 Act). The new definition is in substance the same as that introduced by the 2000 Act. The new subsection 2B is a consequence of the new section 18A introduced by section 114 of the Act. Sub-paragraphs (3) to (5) make consequential amendments to terminology.

Prescription and Limitation (Scotland) Act 1973 (c.52).

553. Sub-paragraph (2) amends section 1 of the 1973 Act in the version which is substituted, from the appointed day, by schedule 12 paragraph 33(2) of the 2000 Act. The purpose is to make clear that the right to a real burden cannot be acquired by positive prescription.
554. Sub-paragraph (3) replaces the reference to 'land obligation' with a reference to 'title condition'. The term 'land obligation' is used in sections 1 and 2 of the Conveyancing and Feudal Reform (Scotland) Act 1970 to identify the rights which are capable of discharge by the Lands Tribunal. Sections 1 and 2 of the 1970 Act are repealed by

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

schedule 15 of the Act. The replacement term in the Act is ‘title condition’ (defined in section 122(1)) the change being one of name rather than of substance.

555. Sub-paragraph (4) makes an amendment of terminology which was overlooked by paragraph 33 of schedule 12 to the 2000 Act.

Land Tenure Reform (Scotland) Act 1974 (c.38).

556. This amendment replaces the reference to ‘land obligation’ with a reference to ‘title condition’. The term ‘land obligation’ is used in sections 1 and 2 of the Conveyancing and Feudal Reform (Scotland) Act 1970 to identify the rights which are capable of discharge by the Lands Tribunal. Sections 1 and 2 of the 1970 Act are repealed by schedule 15 of the Act. The replacement term in the Act is ‘title condition’ (defined in section 122(1)). The change is one of name rather than of substance.

Land Registration (Scotland) Act 1979 (c.33).

557. The amendments in sub-paragraph (2) are consequential on the repeal, in schedule 15, of sections 17 and 18 of the 1979 Act.
558. For the most part sub-paragraph (3) repeats an amendment made prospectively by schedule 12 paragraph 39(3)(c) of the 2000 Act (which is repealed by schedule 15 of the Act). This is necessary because the amendment is capable of relating to Part 3 of the Act. Sub-paragraph (3) comes into force on the day after Royal Assent (section 129(3)) — and not on the appointed day, as was the position under the 2000 Act. The only addition to the earlier version of the amendment is a reference to section 41(a) of the Act. This makes clear that it is not necessary to expedite a notice of title in the case of a conservation burden which is already on the Land Register.
559. Sub-paragraph (4) extends the meaning of “condition” in section 6 to include servitudes created by a deed registered under section 75(1) and rules of the development management scheme.
560. Sub-paragraph (5) amends section 12(3) of the 1979 Act to ensure that the provisions on the Keeper’s indemnity do not extend to the enforceability of sporting rights registered in the Land Register. It also extends the meaning of condition to include a rule of the development management scheme. Servitudes created under section 75 are already covered by section 12(3)(l) of the 1979 Act.
561. Sub-paragraph (6) repeats an amendment made prospectively by schedule 12 paragraph 39(6)(b) of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (which is repealed by schedule 15 of the Act). This is necessary because the amendment is capable of relating to Part 3 of the Act. Sub-paragraph (4) comes into force on the day after Royal Assent (section 129(3)) — and not on the appointed day, as was the position under the 2000 Act.
562. Sub-paragraph (7) amends section 28(1) as a consequence of the treatment of sporting rights as separate tenements under section 65A of the 2000 Act (as inserted by section 114 of the Act). As a result, a sporting right registered in the Land Register will have its own title sheet.

Ancient Monuments and Archaeological Areas Act 1979 (c.46).

563. Section 17(7)(b), which provides that sections 1 and 2 of the Conveyancing and Feudal Reform (Scotland) Act 1970 are not to apply to agreements made under section 17, is repealed as (i) sections 1 and 2 of the 1970 Act are repealed by schedule 15 of the Act, and (ii) a section 17 agreement would not fall within the successor provisions (i.e. Part 8 of the Act) because they are not ‘title conditions’ as defined in section 122(1).

Health and Social Services and Social Security Adjudications Act 1983 (c.41).

564. Section 23(1)(b) refers to an 'interest in land' as defined in section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970. That definition has now been replaced by a definition of 'real right in land' (see schedule 14, paragraph 4 of this Act). This amendment makes the necessary adjustment to section 23.
565. Feudal terminology is also replaced, following the Abolition of Feudal Tenure etc. (Scotland) Act 2000.

Further and Higher Education (Scotland) Act 1992 (c.37).

566. This amendment replaces the reference to 'land obligations' with a reference to 'title conditions'. The term 'land obligation' is used in sections 1 and 2 of the Conveyancing and Feudal Reform (Scotland) Act 1970 to identify the rights which are capable of discharge by the Lands Tribunal. Sections 1 and 2 of the 1970 Act are repealed by schedule 15 of the Act. The replacement term in the Act is 'title condition' (defined in section 122(1)), the change being one of name rather than of substance.

Crofters (Scotland) Act 1993 (c.44).

567. This amendment to section 16(6) replaces the reference to 'land obligations' with a reference to 'title conditions'. The term 'land obligation' is used in sections 1 and 2 of the Conveyancing and Feudal Reform (Scotland) Act 1970 to identify the rights which are capable of discharge by the Lands Tribunal. Sections 1 and 2 of the 1970 Act are repealed by schedule 15 of the Act. The replacement term in the Act is 'title condition' (defined in section 122(1)), the change being one of name rather than of substance.

Standards in Scotland's Schools etc. Act 2000 (asp 6).

568. This amendment to section 58(1) replaces the reference to 'land obligations' with a reference to 'title conditions'. The term 'land obligation' is used in sections 1 and 2 of the Conveyancing and Feudal Reform (Scotland) Act 1970 to identify the rights which are capable of discharge by the Lands Tribunal. Sections 1 and 2 of the 1970 Act are repealed by schedule 15 of the Act. The replacement term in the Act is 'title condition' (defined in section 122(1)), the change being one of name rather than of substance.

Mortgage Rights (Scotland) Act 2001 (asp.11)

569. This paragraph makes consequential changes to the terminology used by the Mortgage Rights (Scotland) Act 2001 to reflect the changes made by paragraph 4 of Schedule 14 to the Conveyancing and Feudal Reform (Scotland) Act 1970.