

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11: Savings, Transitional and General

Section 122: Interpretation

501. Only a small number of the definitions require explanation here.

- *appointed day*. This is the date on which most of the 2000 Act comes into force, and on which the feudal system is abolished. Section 129(2) provides that some of the Act will also come into force on this day. The day is to be fixed by the Scottish Ministers by order.
- *facility burden*. This definition substantially replicates the (unnamed) definition in section 23(1), (3) and (4) of the 2000 Act (which is repealed by schedule 15 of this Act). The purpose of *subsection (2)* is to exclude obligations, typically in relation to roads and sewers, which have been assumed by a local authority or other public body since the maintenance of the common facility is covered already without the need to transfer the right to enforce the burden. The list of facilities in *subsection (3)* is intended to be illustrative and not exhaustive.
- *holder*. The words ‘has right’ import the idea that the title might not have been completed by registration. See for example section 40.
- *land*. The definition includes separate tenements such as minerals and salmon fishings. The exclusion of *dominium directum* (feudal superiority) is to prevent any argument that, for example, a superiority could be the subject of a notice of preservation under section 50 (All superiorities will be extinguished on the appointed day under section 2(2) of the 2000 Act).
- *maintenance*. The definition ensures that maintenance includes repairs. This does not include out and out improvement, but there is a concept of ‘betterment’ in which a facility is replaced or repaired using a more modern technique. In their Report on the Law of the Tenement (Scot Law Com No. 162), the Scottish Law Commission express the opinion that “it is maintenance of a tenement to replace lead piping with copper, or to replace Victorian pull-bells with an entryphone system.” Converting a flat roof into a pitched one might be considered to be an improvement rather than maintenance or repair.
- *personal pre-emption burden* and *personal redemption burden*. Rights of pre-emption or redemption which were enforceable by a superior prior to the appointed day may by the registration of a notice be converted into personal real burdens (i.e. burdens without a benefited property). See the note on section 114.
- *service burden*. This definition substantially replicates the (unnamed) definition in section 23(2) of the 2000 Act (which is repealed by schedule 15 of this Act).

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

- *title condition*. This definition follows the substance, though not the form, of the definition of 'land obligation' given in section 1(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (which is repealed by schedule 15 of this Act). 'Title condition' is the replacement term for 'land obligation'. Paragraphs (c) and (f) are not currently covered by the term 'land obligation'. Paragraph (g) allows the Scottish Ministers to add to the list.