

# TITLE CONDITIONS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 11: Savings, Transitional and General**

##### *Section 119: Savings and transitional provisions etc.*

493. The savings and transitional provisions contained in this section have, for the most part, already been discussed in the appropriate context. Only a few need be mentioned here.
494. As *subsection (1)* acknowledges, the division between the old law and the new is, usually, the time of registration of the deed in question. Burdens discharged, varied or created by deeds registered before the appointed day are governed by the old law. Deeds registered on or after the appointed day are governed by the provisions of the Act. Section 4(1), for example, provides that a real burden is created ‘by duly registering’ the constitutive deed. Similarly, section 15(1) provides that a burden is discharged ‘by registering’ a deed of discharge. Sometimes, as with the creation of real burdens, the new law imposes more exacting standards than the old; but, as subsection (1) makes clear, the new standards are to apply only prospectively.
495. The Act, following the common law, requires the use of a deed for a number of juridical acts in relation to real burdens — most notably creation, variation and discharge. Strictly, section 3(1) of the 1979 Act does not: in other words, if a real burden is entered on (or deleted from) the Land Register, the entry or deletion is legally effective under that provision notwithstanding the absence of a valid underlying deed. The Register would then be inaccurate, however, and vulnerable to rectification under section 9 of the Act. The purpose of *subsection (2)* is to preserve this rule of land registration.
496. **Section 10** provides for circumstances in which a former owner will retain liability in respect of an obligation due when that person ceased to be owner. *Subsection (5)* disapplies this new rule where the transfer of ownership took place before the appointed day.
497. *Subsection (6)* provides that a breach of a real burden occurring before the appointed day cannot be subject to the new provisions for acquiescence made by section 16.
498. By virtue of *subsection (7)*, contractual liability will continue to exist in parallel to the terms of a real burden created in a deed registered before the appointed day. However, community burdens are excepted from this: any incidental contractual liability that duplicates a community burden will cease, regardless of the date of creation.

##### *Section 120: Requirement for dual registration*

499. This section prevents a deed which requires, under the Act, to be registered against both properties, from being registered against one property only. The provision is aimed particularly at dispositions containing new real burdens. If the disponee were able to register against the property being conveyed only (as under current practice), the effect would be to transfer the property free of the burdens.

### **Section 121: Crown application**

500. This section makes it clear that the Act applies to all land owned by the Crown in Scotland, including property belonging to Government Departments as well as the private estates of Her Majesty and His Royal Highness The Prince of Wales.

### **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).
- *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.

### **Section 123: The expression ‘owner’**

502. This section defines ‘owner’. The first half of *subsection (1)* sets out the general rule. An owner is a person who ‘has right’ to property (a term familiar from sections 3 and

4 of the Conveyancing (Scotland) Act 1924). A person ‘has right’ if he is grantee of a delivered conveyance (or equivalent). Registration is not required.

503. More than one person might be owner within this definition. If ownership is held concurrently, as with *pro indiviso* owners, this presents no particular difficulty. But the position is, or may be, different, with consecutive owners. The second half of subsection (1) deals with this problem. If two or more people acquiring rights consecutively are capable of falling within the definition, the ‘owner’ is to be the last of them (paragraph (b)) — except for the purposes of the provisions listed in paragraph (a) relating to the creation or discharge of burdens.
504. *Subsection (2)* introduces a special rule where a heritable creditor is in possession of the property. A heritable creditor in possession is to be the owner in substitution for the debtor except when burdens are being created, varied or discharged, where the heritable creditor is treated as one of the owners.
505. The effect of paragraph (a) of *subsection (3)* is to exclude heritable creditors in possession from section 60(1) (which is concerned with deduction of title).

### **Section 124: Sending**

506. Paragraph (a) of *subsection (1)* makes clear that it is sufficient if the thing to be sent is sent to the person’s solicitor or other agent. Paragraph (b) provides a solution where the person’s name is unknown, and excuses the sender from attempts to discover it.
507. *Subsection (2)* explains how a thing may be sent.
508. *Subsection (3)* gives the rule as to when a thing is considered to have been sent.

### **Section 125: References to distance**

509. This section explains how the four metre distance (see for example sections 21(3) and 32) is to be calculated. The distance is calculated on the horizontal plane. This means that all properties are treated as being on the same level. For instance in a tenement, the flats above or below would be treated as being zero metres away, regardless of the vertical distance between each property.
510. Paragraph (a) follows the rule for neighbour notification set out in article 2(1) of the [Town and Country Planning \(General Development Procedure\) \(Scotland\) Order 1992, SI 1992/224](#) (paragraph (d) of definition of ‘neighbouring land’). ‘Road’ has the meaning given by section 151(1) of the Roads (Scotland) Act 1984 (section 122 (1)).
511. Paragraph (b) ensures that measurements are taken from the property itself and not from, for example, an access roadway in respect of which the property has, as a pertinent, a *pro indiviso* share. It is the ownership of pertinents not their dimensions which is to be disregarded so measurement is taken from the property *not* its pertinent.

### **Section 127: Orders, regulations and rules**

512. At various points the Act empowers the Scottish Ministers to make orders, regulations or rules. [Section 127](#) explains how this is to be done.

### **Section 129: Short title and commencement**

513. *Subsection (2)* provides that most of the Act is not to come into force until the appointed day, i.e. the day on which the feudal system is abolished (section 122(1)). See the explanatory note on the term ‘appointed day’ in section 122.
514. The provisions set out in *subsection (3)* come into force on the day after Royal Assent. The provisions in *subsection (4)* come into force on a day or days to be appointed by the Scottish Ministers which may be different from the appointed day referred to above. Part 3 deals with personal real burdens and Part 6 with the Development

Management Scheme. Sections 106 to 110 mostly deal with compulsory purchase and land acquisition in the shadow of compulsory purchase powers.

***Schedule 1: Form importing terms of title conditions***

515. This is the form of words referred to in section 6(2) for importing title conditions by reference to a deed of conditions. This replaces the form of words in schedule H to the Conveyancing (Scotland) Act 1874 which is repealed by schedule 15.

***Schedule 2: Form of notice of termination***

516. This is the statutory form of notice prescribed by section 20(1) for the termination of real burdens which are at least 100 years old. The schedule includes an explanatory note and notes for completion of the notice. See further sections 20 to 24 of the Act on the termination procedure.

***Schedule 3: Form of affixed notice relating to termination***

517. **Section 21** provides 3 different mechanisms for the intimation of a ‘sunset rule’ application proceeding under section 20 of the Act (for the termination of real burdens that are at least 100 years old). The statutory form of intimation in schedule 3 is to be used with the mechanism outlined in paragraph (b) of subsection (2). The schedule includes notes for completion of the notice.

***Schedule 4: Form of notice of proposal to register deed of variation or discharge***

518. This is the statutory form of notice for where a community burden is to be varied or discharged by the owners of a majority of units under section 33 in relation to one or more burdened properties. Under section 34(2) a notice in, or as near as may be in, the form of schedule 4 must be sent to the owners of the units that have not granted the deed. The schedule includes an explanatory note and notes for completion of the notice.

***Schedule 5: Further form of notice of proposal to register deed of variation or discharge of community burden: sent version***

519. This is one of the 2 statutory forms of notice for where a community burden is to be varied or discharged by a deed granted by the owners of the units adjacent to a burdened property under section 35. Under paragraph (a) of section 36(2) notice may be given in, or as near as may be in, the form of schedule 5 by sending it along with the deed to the owners of the other benefited properties in the community. The schedule includes an explanatory note and notes for completion of the notice.

***Schedule 6: Further form of notice of proposal to register deed of variation or discharge of community burden: affixed version***

520. This is the second statutory form of notice for where a community burden is to be varied or discharged by a deed granted by the owners of the units adjacent to a burdened property under section 35. Under paragraph (b) of section 36(2) notice may be given in, or as near as may be in, the form of schedule 6 by a conspicuous notice affixed to each affected unit and such lamp posts as may be required by the paragraph. The schedule includes notes for completion of the notice.

***Schedule 7: Form of notice of preservation***

521. This is the statutory form of notice prescribed by section 50(1) for the preservation of the status of benefited property in circumstances where that status is currently implied by common law. The schedule includes an explanatory note and notes for completion of the notice. See further sections 50 and 115 of the Act.

***Schedule 8: Community consultation notice***

522. This is the statutory form of notice for where a community burden is to be varied or discharged by the owners of a majority of units in a sheltered or retirement housing development under section 33. Under section 55 before a deed of variation or discharge is granted, a notice in, or as near as may be in, the form of schedule 8 must be sent to the owners of the units in the development. The schedule includes an explanatory note and notes for completion of the notice.

***Schedule 9: Form of notice of converted servitude***

523. This is the statutory form of notice prescribed by section 80(4) for the preservation of certain of the negative servitudes which were converted, on the appointed day, into real burdens. The schedule includes an explanatory note and notes for completion of the notice. See further sections 80(4) to (8) and 115 of the Act.

***Schedule 10: Form of undertaking***

524. This is the statutory form of undertaking not to exercise a right of pre-emption, prescribed by section 83(1)(a). A pre-emption holder who did not wish to exercise their right to purchase could be approached to sign this undertaking. The schedule includes notes for completion of the undertaking. See further sections 82 and 83 of the Act.

***Schedule 11: Title Conditions not subject to discharge by Lands Tribunal***

525. This schedule lists those title conditions which are not subject to discharge by the Lands Tribunal under Part 9 of the Act. The list is based on the equivalent list in schedule 1 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (which is repealed by schedule 15 of this Act). Paragraph 1 of that list (obligation to pay rent) has been incorporated directly into the definition of 'title condition' (for which see section 122(1)).

***Schedule 12: Form of application for relevant certificate***

526. This schedule provides the form of certificate defined in section 107(11). The certificate is to provide for any title conditions that are not to be extinguished (or not to be extinguished in relation to a particular benefited property) where land has been acquired by agreement. The schedule includes notes for completion of the application.

***Schedule 13: Amendment of Abolition of Feudal Tenure etc. (Scotland) Act 2000***

527. [Schedule 13](#) contains amendments to the 2000 Act. The amendments come into force on the day after Royal Assent (section 129(3)).

***Paragraph 2.***

528. Section 17(1) of the 2000 Act extinguishes superiors' rights to enforce real burdens, subject to some savings. The amendments add further savings. Section 18A (on personal pre-emption burdens and personal redemption burdens), section 18B (on economic development burdens), section 18C (on health care burdens) and section 27A (on conservation burdens) are new sections inserted by section 114 of the Act. Sections 52 to 56 of the Act create new enforcement rights for existing burdens in place of the implied enforcement rights which are extinguished by section 49 of the Act. Section 56 replaces section 23 of the 2000 Act (which is repealed by schedule 15). The saving for manager burdens is the counterpart of section 63(10).
529. The change to paragraph (b) of section 17(1) is to ensure that it is only a person's right to enforce a burden as a feudal burden that is extinguished on the appointed day. If the same person can enforce a burden in another capacity, for example as the owner of

nearby land or as the holder of a conservation burden, health care burden or economic development burden then this right to enforce is unaffected.

530. The introduction of the new paragraph (aa) into subsection (3) of section 17 ensures that where there is an ongoing action or an existing decree or interlocutor as at the appointed day in respect of a feudal burden then this will be unaffected if the right to enforce the burden is preserved under one of the provisions mentioned in section 17(1).

**Paragraph 3.**

531. Sub-paragraph (a) makes consequential reference to the new provisions inserted by section 114 of the Act. The insertion of subsection 6A by sub-paragraphs (b) and (c) ensures that registration of a notice to reallocate a feudal burden under section 18 of the 2000 Act does not preserve a right to enforce a manager burden. Sub-paragraph (d) excludes sporting rights from the category of rights described as “rights to enter, or otherwise make use of, property” in section 18(7)(b)(i).

**Paragraph 4.**

532. This alters the test to be applied by the Lands Tribunal when determining whether a superior may preserve a right to enforce a feudal burden by converting it into an ordinary burden under section 20 of the 2000 Act. The test is derived from the test for interest to enforce in section 8(3) of the Act.

**Paragraph 5.**

533. Section 25 of the 2000 Act provides that on reallocation of a real burden the right to enforce is subject to any counter-obligation. The reference to reallocation under section 23 of the 2000 Act (to be repealed) is replaced by a reference to reallocation under section 56 of the Act. A reference to reallocation of manager burdens is added.

**Paragraph 6.**

534. The amendment to section 27(3)(a) of the 2000 Act is consequential on the repeal (by schedule 15 of the Act) of section 26 of the 2000 Act and its replacement by section 38 of the Act. Section 27A is a new section inserted by section 114 of the Act.

**Paragraph 7.**

535. The amendments to subsections (1), (3) and (4) are consequential to the introduction by section 114 of the Act of new sections 18A, 18B, 18C and 27A into the 2000 Act. Section 42 of the 2000 Act provided that where a superior has a choice of several of the procedures under the 2000 Act that may be used to save a burden the various options are mutually exclusive. The new subsection (5) mirrors section 116 of the Act and permits feudal burdens to be preserved in favour of land outwith Scotland.

**Paragraph 8.**

536. Section 43 of the 2000 Act provides that the Keeper of the Registers does not have responsibility for determining whether the superior has complied with the notification requirements of section 41(3) or if the superior had the ability to enforce the right in question. The amendments are consequential upon the introduction of new sections 18A, 18B, 18C and 27A by section 114 of the Act.

**Paragraph 10.**

537. Sub-paragraph (a) alters the definition of conservation body in consequence of the repeal (by schedule 15 of the Act) of section 26 of the 2000 Act and its replacement by section 38 of the Act. Sub-paragraph (b) adds the new section 27A inserted by section 114 of the Act to the scope of section 49 of the 2000 Act. Sub-paragraphs (c) and

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2003 (asp 9) which received Royal Assent on 3 April 2003*

(d) inserts definitions as a consequence of section 114. Sub-paragraph (e) ensures that sporting rights are not treated as real burdens for the purposes of Part 4 of the 2000 Act.

**Paragraph 11.**

538. This paragraph provides that where a holder of sporting rights has taken action to preserve them under section 65A of the 2000 Act, they will not be extinguished under section 54(1) of the 2000 Act.

**Paragraph 12.**

539. This amendment replaces the reference in section 56 of the 2000 Act 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.

**Paragraph 13.**

540. Section 73 of the 2000 Act makes provision for the automatic translation of certain feudal terms which might be found in deeds or enactments dating from before the appointed day but having to be applied after that date. The amendments make some minor changes to the timing of the provisions in section 73. The amendment in sub-paragraph (b)(iii) reflects the repeal of section 23 of the 2000 Act and its replacement by section 56 of the Act (which provides for the preservation and creation of rights to enforce facility burdens).

541. The new subsection (2A) inserted by sub-paragraph (c) provides that a provision in a document or in an entry in the Land Register which states that a real burden may be waived with the consent of a stated party shall be disregarded unless the reference in the document or entry is a reference to a superior and that reference is in terms of section 73(2) of the 2000 Act to be construed as a reference to the person entitled to enforce under one of the provisions listed in that subsection.

**Paragraph 14.**

542. The insertion of a subsection (2) into section 75 of the 2000 Act ensures that contractual obligations which were incidental to feudal burdens will only remain where the original vassal remains the owner of the property.

**Paragraph 15.**

543. This makes a minor change to the commencement provision to allow the Scottish Ministers to bring section 63 of the 2000 Act into force by order.

**Paragraph 16.**

544. This amendment inserts new schedules into the 2000 Act. Schedule 5A contains the form of notice to prospectively convert a real burden into a personal pre-emption burden or personal redemption burden. Schedules 5B and 5C contain the forms of notice to prospectively convert a real burden into an economic development burden or a health care burden respectively. The schedules include explanatory notes and notes for completion of the notice. See the new sections 18A, 18B and 18C of the 2000 Act as inserted by section 114 of the Act.

**Paragraph 17.**

545. This amendment substitutes note 1 in the notes for completion of the notice to schedule 8 to the 2000 Act (form of notice to preserve a conservation body or the Scottish Ministers' right to a real burden).

**Paragraph 18.**

546. This amendment inserts a new schedule 8A into the 2000 Act containing the form of notice nominating a conservation body or the Scottish Ministers to have title to enforce a real burden. The schedule includes an explanatory note and notes for completion of the notice. See the new section 27A of the 2000 Act as inserted by section 114 of the Act.

**Paragraph 19.**

547. This amendment inserts a new schedule 11A into the 2000 Act containing the form of notice to prospectively convert sporting rights into a tenement in land. The schedule includes an explanatory note and notes for completion of the notice. See the new section 65A of the 2000 Act as inserted by section 114 of the Act.

**Paragraph 20.**

548. This corrects a technical error.

**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.



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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 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.

### ***Schedule 15: Repeals***

570. This schedule deals with the repeals that are made necessary or possible as a result of the reform of the law of real burdens and related reforms.

### **Registration Act 1617.**

571. References to reversions and regresses are removed in consequence of the repeal of the Reversion Act 1469 by section 89 of the Act.

**Redemptions Act 1661.**

572. The Act is wholly obsolete and is repealed with the repeal of the Reversion Act 1469 by section 89 of the Act.

**Registration of Leases (Scotland) Act 1857: section 3.**

573. [Section 3\(5\)](#) falls in consequence of the repeal of section 32 of the Conveyancing (Scotland) Act 1874 and section 17 of the Land Registration (Scotland) Act 1979 by this schedule.

**Conveyancing (Scotland) Act 1874: section 32 and Schedule H**

574. The first half of section 32 repeats a power that is already available at common law. The second half of section 32 (which permits the creation of a real burden in a deed of conditions) is repealed in consequence of section 4(2) of the Act. In future it will be possible to create a real burden using any deed which satisfies the conditions set out in section 4(2).

**Conveyancing (Scotland) Act 1924. Section 9, Schedule E.**

575. This section, which exempts heritable securities from having to contain burdens and provides a mechanism for other cases where burdens have been omitted, is repealed as a result of section 68 of the Act.
576. [Section 40\(3\)](#), which enables a heritable creditor to create real burdens by using a deed of conditions under section 32 of the Conveyancing (Scotland) Act 1874, is repealed following the repeal of section 32 itself. See also the note to paragraph 3 of schedule 13.
577. The repeal in schedule B is consequential on the repeal by this schedule of section 32 and schedule H of the Conveyancing (Scotland) Act 1874.
578. Schedule O: warrants of registration will in terms of section 5(1) of the 2000 Act no longer be required.

**Church of Scotland (Property and Endowments) Act 1925: section 22.**

579. This repeal should be read with section 85 of the Act.

**Church of Scotland (Property and Endowments)(Amendment) Act 1933 (c.24)**

580. This repeal is to allow the order to be made under section 108 to make provisions relating to the setting and determination of price.

**Conveyancing Amendment (Scotland) Act 1938: section 9.**

581. This section, which limits the effect of certain rights of pre-emption, is replaced by section 84 of the Act.

**Conveyancing and Feudal Reform (Scotland) Act 1970.**

582. [Sections 1, 2 and 7](#), schedule 1. Part 8 of the Act introduces a revised jurisdiction for the Lands Tribunal in relation to the discharge of real burdens, servitudes and other title conditions in place of the jurisdiction conferred by the provisions here repealed.
583. [Section 53](#). The definition in section 53(4) is repealed in consequence of the repeal of those sections of the 1970 Act where the term ‘prescribed’ is found, namely section 2 (by this schedule) and section 4 (by schedule 13 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000).

**Land Tenure Reform (Scotland) Act 1974: section 19.**

584. This repeal is in consequence of the repeal, by this schedule, of section 2 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

**Land Registration (Scotland) Act 1979.**

585. Paragraph (a) of section 15(2) lists a number of provisions. Its repeal is consequential on the repeal, by this Act, of those provisions (Paragraph (a) is amended, prospectively, by schedule 12 paragraph 39(6)(a) of the Abolition of Feudal Tenure etc. (Scotland) Act 2000, but that amendment now falls).
586. [Section 17](#) provides that, except where the deed says otherwise, a deed of conditions under section 32 of the Conveyancing (Scotland) Act 1874 takes effect immediately on registration. It falls in consequence of the repeal of section 32 by this schedule.
587. [Section 18](#), concerning the effect of registration of a discharge etc, is replaced by sections 15 and 48 of the Act.

**Aviation Security Act 1982: Schedule 1.**

588. This repeal is consequential on the abolition of feuduties and ground annuals by Part 3 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000.

**Housing (Scotland) Act 1987: section 72**

589. This repeal is consequential on the abolition of pecuniary real burdens by section 117 of the Act.

**Aviation and Maritime Security Act 1990: section 2.**

590. This repeal is consequential on the abolition of feuduties and ground annuals by Part 3 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000.

**Enterprise and New Towns (Scotland) Act 1990: section 32.**

591. This repeal is consequential on the amendments made to the Act by section 113 of the Act.

**Further and Higher Education (Scotland) Act 1992: Schedule 3.**

592. This repeal is consequential on the abolition of feuduties and stipends by Part 3 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000.

**Requirements of Writing (Scotland) Act 1995: section 13(2).**

593. The section is repealed as it referred to section 78 of the Titles to Land Consolidation (Scotland) Act 1868, which is to be repealed by the 2000 Act.

**Abolition of Feudal Tenure etc. (Scotland) Act 2000**

594. The repeal of provisions in this Act comes into force on the day after Royal Assent (section 129(4)).
595. The reference in section 17(1) falls with the repeal of section 23 of the Act.
596. [Section 20\(8\)\(b\)](#) and (c) are unnecessary because of the extinguishing of feudal burdens by section 17(1) of the 2000 Act.
597. [Section 23](#) is replaced by section 56 of the Act.
598. [Section 24](#): The reference falls with the repeal of section 23 of the Act.

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

599. [Section 26](#) is replaced by section 38 of the Act.
600. [Section 28](#): The reference falls in consequence of the repeal of section 31 of the Act.
601. [Section 29](#) is replaced by section 39 of the Act.
602. [Section 30](#) is replaced by section 41 of the Act.
603. [Section 31](#) is replaced by section 42 of the Act.
604. [Section 32](#) is replaced by section 38(3) of the Act.
605. [Section 49](#): This definition is replaced by subsection (9) of new section 65A of the 2000 Act as inserted by section 114 of the Act.
606. [Section 60\(2\)](#) is replaced by section 44(2) of the Act.
607. [Section 77](#): This is consequential on the repeal, by this schedule, of section 15(2)(a) of the Land Registration (Scotland) Act 1979 and schedule 12 paragraph 39(6) of the 2000 Act.
608. [Schedule 8](#): The words repealed would not have been a possible outcome of sections 27 and 28 of the 2000 Act.
609. Schedule 12 to the 2000 Act contains minor and consequential amendments resulting from feudal abolition and the other reforms dealt with in the Act. As the Act now replaces and (in this schedule) repeals some of the provisions referred to in schedule 12, the relevant paragraphs of schedule 12 fall to be repealed in turn. Of the repeals listed, only the following do not come into the category just described:
- Paragraph 7(6): As section 14 of the Land Registers (Scotland) Act 1868 does not relate to entails it should not cease to have effect.
  - Paragraph 9(4)(d)(ii): This is a minor drafting change.
  - Paragraph 30(6)(d)(ii): The words repealed are replaced by paragraph 4 of schedule 13 to the Act.
  - Paragraph 39(3)(c): The words repealed are replaced by paragraph 7(3) of schedule 13 to the Act.
  - Paragraph 39(6)(b): The words repealed are replaced by paragraph 7(5) of schedule 13 to the Act.
610. Schedule 13 to the 2000 Act contains repeals resulting from feudal abolition and the other reforms dealt with in the Act. As the Act now replaces and (in this schedule) repeals some of the provisions referred to in schedule 13, the relevant parts of schedule 13 fall to be repealed in turn. The only repeal not falling into this category is of words in section 3(6) of the Land Registration (Scotland) Act 1979. Section 3(6) is not repealed by the Act but it is re-cast by schedule 13 paragraph 7(3) in a way which supersedes the original repeal.