

# TITLE CONDITIONS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 Conservation and Other Personal Real Burdens**

##### *Section 45: Economic development burdens*

202. This section introduces a new category of personal real burden to be known as “economic development burdens”. These burdens may be created by anyone but can only be in favour of a local authority or the Scottish Ministers. It will only be possible to create such a burden for the purpose of promoting economic development. Economic development burdens are included in the definition of personal real burdens in section 1(3). As a result, the holder has a presumed interest to enforce, and the burden need not operate in favour of other land.
203. Section 18B of the 2000 Act, as inserted by section 114 of this Act, will allow a feudal burden imposed in the past that meets the economic development criteria to be converted into an economic development burden. The form of notice to convert the burden will be contained in schedule 5B of the 2000 Act (inserted by schedule 13 of the Act).
204. *Subsection (2)* provides that if someone other than a local authority or the Scottish Ministers wishes to create an economic development burden they must first obtain the consent of the body which it is intended will hold the right to enforce the burden.
205. *Subsection (3)* allows local authorities (or Scottish Ministers) to include a clawback condition so that they will be able to receive a further payment if the value of the land increases, for example due to a change in use. It is not possible to create an obligation to make a periodical payment as an economic development burden. Periodical payments under title conditions are prohibited by section 2 of the Land Reform (Scotland) Act 1974 (amended by paragraph 6 of Schedule 14) except where it is a payment in defrayal of or contribution towards some continuing cost related to the land.
206. *Subsection (4)* prohibits the creation of a standard security over an economic development burden. Further explanation of this can be found in the note on subsection (3) of section 38 which deals with conservation burdens.
207. *Subsection (5)* imports the provisions on enforcement where there is no completed title and on completion of title which apply to conservation bodies.