

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Transitional: Implied Rights of Enforcement

Section 49: Extinction

219. *Subsection (1)* of section 49 abolishes, with effect from the appointed day, the common law rules by which the right to enforce real burdens may arise by implication. Other provisions of the Act deal with the consequences. Thus for **new** burdens (i.e. those created by deed registered on or after the appointed day) the benefited property *must* be **nominated** and **identified** in the constitutive deed (section 4(2)(c)), while for **existing** burdens (i.e. those created by deed registered before the appointed day) sections 52 to 54 and 56 provide **replacement** rules for identifying the benefited property. The meaning of 'appointed day' is given in section 122(1).
220. *Subsection (2)* postpones by ten years the abolition of implied rights in cases where the enforcement rights can be preserved under section 50. Ten years is the period allowed under section 50(1) (or section 80(2)) for registration of the appropriate notice. Section 80 deals with the conversion of negative servitudes into real burdens.