

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Transitional: Implied Rights of Enforcement

Section 51: Duties of Keeper: amendments relating to unenforceable real burdens

229. Burdens which are currently enforceable by virtue of an implied right (almost always under the rule in *J A Mactaggart & Co v Harrower* (1906) 8 F 1101) where no notice is registered under section 50 will cease to be enforceable by anyone under section 49. In that case the burdens fail, through want of a benefited property (see section 1(1)), and should be deleted from the Land Register. *Section 51* makes clear that this will not happen at once.
230. The section has two main purposes. First, it makes clear (in *subsections (1) and (2)*) that the Keeper has no immediate duty to delete failed burdens from the Land Register but can wait until deletion is requested or ordered by the court or Lands Tribunal.
231. Secondly, *subsection (2)* gives the Keeper temporary relief for a period of ten years after the appointed day. There is no obligation to delete burdens during this period, even on request; and *subsection (3)* enables the Keeper to deal with applications for registration of an interest in land without having to make a judgement as to whether or not a burden had been extinguished. After the end of the 10 year period, deletions can be requested at any time.
232. Although the Keeper will be entitled to remove extinguished burdens from the register at his discretion, *subsection (4) and (5)* make clear that he will not be able to do so when the burden in question is the subject of a notice which is before a court or the Lands Tribunal for a decision on its eligibility for registration. This would occur where a notice of preservation or converted servitude was rejected by the Keeper and the rejection is under challenge (see section 115(6)-(8)).