

EXPLANATORY NOTES

TITLE CONDITIONS (SCOTLAND) ACT 2003

INTRODUCTION

BACKGROUND

THE ACT

PART 1: REAL BURDENS: GENERAL

PART 2: COMMUNITY BURDENS

PART 3: CONSERVATION AND OTHER PERSONAL REAL BURDENS

PART 4: TRANSITIONAL: IMPLIED RIGHTS OF ENFORCEMENT

PART 5: REAL BURDENS: MISCELLANEOUS

PART 6: DEVELOPMENT MANAGEMENT SCHEME

PART 7: SERVITUDES

PART 8: PRE-EMPTION AND REVERSION

PART 9: TITLE CONDITIONS: POWERS OF LANDS TRIBUNAL

PART 10: MISCELLANEOUS

PART 11: SAVINGS, TRANSITIONAL AND GENERAL

COMMENTARY ON SECTIONS

PART 1: REAL BURDENS: GENERAL

Section 1: The expression "real burden"

Section 2: Affirmative, negative and ancillary burdens

Section 3: Other characteristics

Section 4: Creation

Section 5: Further provision as respects constitutive deed

Section 6: Further provision as respects creation

Section 7: Duration

Section 8: Right to enforce

Section 9: Persons against whom burdens are enforceable

Section 10: Affirmative burdens: continuing liability of former owner

Section 11: Affirmative burdens: shared liability

Section 12: Division of a benefited property

Section 13: Division of a burdened property

Section 14: Construction

Section 15: Discharge

Section 16: Acquiescence

Section 17: Further provision as regards extinction where no interest to enforce

Section 18: Negative prescription

Section 19: *Confusio* not to extinguish real burden

Section 20: Notice of termination

Section 21: Intimation

Section 22: Oath or affirmation before notary public

Section 23: Prerequisite certificate for registration of notice of termination

Section 24: Effect of registration of notice of termination.

PART 2: COMMUNITY BURDENS

Section 25: The expression “community burdens”

Section 26: Creation of community burdens: supplementary provision

Section 27: Effect on units of statement that burdens are community burdens

Section 28: Power of majority to appoint manager etc.

Section 29: Power of majority to instruct common maintenance

Section 30: Owner’s decision binding

Section 31: Remuneration of manager

Section 32: The expressions “affected unit” and “adjacent unit”

Section 33: Majority etc. variation and discharge of community burdens

Section 34: Variation or discharge under section 33: intimation

Section 35: Variation and discharge of community burdens by owners of adjacent units

These notes relate to the Title Conditions (Scotland) Act 2003 (asp 9)

Section 36: Variation and discharge under section 35: intimation

Section 37: Preservation of community burden in respect of which deed of variation or discharge has been granted as mentioned in section 35(1)

PART 3 CONSERVATION AND OTHER PERSONAL REAL BURDENS

Section 38: Conservation burdens

Section 39: Assignment

Section 40: Enforcement where no completed title

Section 41: Completion of title

Section 42: Extinction of burden on body ceasing to be conservation body

Section 43: Rural housing Burdens

Section 44: Maritime burdens

Section 45: Economic development burdens

Section 46: Health care burdens

Section 47: Interest to enforce

Section 48: Discharge

PART 4: TRANSITIONAL: IMPLIED RIGHTS OF ENFORCEMENT

Section 49: Extinction

Section 50: Preservation

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

Section 52: Common schemes: general

Section 53: Common schemes: related properties

Section 54: Sheltered housing

Section 55: Grant of deed of variation or discharge of community burdens relating to sheltered or retirement housing: community consultation notice

Section 56: Facility burdens and service burdens

Section 57: Further provision as respects implied rights of enforcement

Section 58: Duty of Keeper to enter on title sheet statement concerning enforcement rights

PART 5: REAL BURDENS: MISCELLANEOUS

Section 59: Effect of extinction etc. on court proceedings

Section 60: Grant of deed where title not completed: requirements

These notes relate to the Title Conditions (Scotland) Act 2003 (asp 9)

Section 61: Contractual liability incidental to creation of real burden

Section 62: Real burdens of combined type

Section 63: Manager burdens

Section 64: Overriding power to dismiss and appoint manager

Section 65: Manager: transitory provisions

Section 66: The expression “related properties”

Section 67: Discharge of rights of irritancy

Section 68: Requirement for repetition etc. of terms of real burden in future deed

Section 69: Further provision as respects deeds of variation and of discharge

Section 70: Duty to disclose identity of owner

PART 6: DEVELOPMENT MANAGEMENT SCHEME

Section 71: Development management scheme

Section 72: Application of other provisions of this Act to rules of scheme

Section 73: Disapplication

Section 74: Intimation of proposal to register deed of disapplication

PART 7: SERVITUDES

Section 75: Creation of positive servitude by writing: deed to be registered

Section 76: Disapplication of requirement that positive servitude created in writing be of a known type

Section 77: Positive servitude of leading pipes etc. over or under land

Section 78: Discharge of positive servitude

Section 79: Prohibition on creation of negative servitude

Section 80: Negative servitudes to become real burdens

Section 81: Certain real burdens to become positive servitudes

PART 8: PRE-EMPTION AND REVERSION

Section 82: Application and interpretation of sections 83 and 84

Section 83: Extinction following pre-sale undertaking

Section 84: Extinction following offer to sell

Section 85: Ending of council’s right of pre-emption as respects certain churches

Section 86: Reversions under School Sites Act 1841

These notes relate to the Title Conditions (Scotland) Act 2003 (asp 9)

Section 87: Right to petition under section 7 of the Entail Sites Act 1840

Section 88: Prescriptive period for obligations arising by virtue of 1841 or 1840 Act

Section 89: Repeal of Reversion Act 1469

PART 9: POWERS OF THE LANDS TRIBUNAL

Section 90: Powers of Lands Tribunal as respects title conditions

Section 91: Special provision as to variation or discharge of community burdens

Section 92: Early application for discharge: restrictive provisions

Section 93: Notification of application

Section 94: Content of notice

Section 95: Persons entitled to make representations

Section 96: Representations

Section 97: Granting unopposed application for discharge or renewal of real burden

Section 98: Granting any other application for variation, discharge, renewal or preservation of title condition

Section 99: Granting applications as respects development management schemes

Section 100: Factors to which the Lands Tribunal are to have regard in determining applications etc.

Section 102: Referral to Lands Tribunal of notice dispute

Section 103: Expenses

Section 104: Taking effect of orders of Lands Tribunal etc.

PART 10: MISCELLANEOUS

Section 105: Alterations to Land Register consequential upon registering certain deeds

Section 106: Extinction of real burdens and servitudes etc. on compulsory acquisition of land

Section 107: Extinction of real burdens and servitudes etc. where land acquired by agreement

Section 108: Amendment of Church of Scotland (Property and Endowments) (Amendment) Act 1933

Section 109: Amendment of Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947

Section 110: Amendment of Forestry Act 1967

These notes relate to the Title Conditions (Scotland) Act 2003 (asp 9)

Section 111: Amendment of Conveyancing and Feudal Reform (Scotland) Act 1970

Section 112: Amendment of Land Registration (Scotland) Act 1979

Section 113: Amendment of Enterprise and New Towns (Scotland) Act 1990

Section 114: Amendment of Abolition of Feudal Tenure etc. (Scotland) Act 2000

Section 115: Further provision as respects notices of preservation or of converted servitude

Section 116: Benefited property outwith Scotland

Section 117: Pecuniary real burdens

Section 118: Common interest

PART 11: SAVINGS, TRANSITIONAL AND GENERAL

Section 119: Savings and transitional provisions etc.

Section 120: Requirement for dual registration

Section 121: Crown application

Section 122: Interpretation

Section 123: The expression 'owner'

Section 124: Sending

Section 125: References to distance

Section 127: Orders, regulations and rules

Section 129: Short title and commencement

Schedule 1: Form importing terms of title conditions

Schedule 2: Form of notice of termination

Schedule 3: Form of affixed notice relating to termination

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

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

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

Schedule 7: Form of notice of preservation

Schedule 8: Community consultation notice

Schedule 9: Form of notice of converted servitude

These notes relate to the Title Conditions (Scotland) Act 2003 (asp 9)

Schedule 10: Form of undertaking

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

Schedule 12: Form of application for relevant certificate

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

Paragraph 2.

Paragraph 3.

Paragraph 4.

Paragraph 5.

Paragraph 6.

Paragraph 7.

Paragraph 8.

Paragraph 10.

Paragraph 11.

Paragraph 12.

Paragraph 13.

Paragraph 14.

Paragraph 15.

Paragraph 16.

Paragraph 17.

Paragraph 18.

Paragraph 19.

Paragraph 20.

Schedule 14: Minor and consequential amendments

These notes relate to the Title Conditions (Scotland) Act 2003 (asp 9)

Registration of Leases (Scotland) Act 1857 (c.26).

Titles to Land Consolidation (Scotland) Act 1868 (c.101)

Conveyancing (Scotland) Act 1924 (c.27).

Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35).

Prescription and Limitation (Scotland) Act 1973 (c.52).

Land Tenure Reform (Scotland) Act 1974 (c.38).

Land Registration (Scotland) Act 1979 (c.33).

Ancient Monuments and Archaeological Areas Act 1979 (c.46).

Health and Social Services and Social Security Adjudications Act 1983 (c.41).

Further and Higher Education (Scotland) Act 1992 (c.37).

Crofters (Scotland) Act 1993 (c.44).

Standards in Scotland's Schools etc. Act 2000 (asp 6).

Mortgage Rights (Scotland) Act 2001 (asp.11)

Schedule 15: Repeals

These notes relate to the Title Conditions (Scotland) Act 2003 (asp 9)

Registration Act 1617.

Redemptions Act 1661.

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

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

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

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

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

Conveyancing Amendment (Scotland) Act 1938: section 9.

Conveyancing and Feudal Reform (Scotland) Act 1970.

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

Land Registration (Scotland) Act 1979.

Aviation Security Act 1982: Schedule 1.

Housing (Scotland) Act 1987: section 72

Aviation and Maritime Security Act 1990: section 2.

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

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

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

Abolition of Feudal Tenure etc. (Scotland) Act 2000

**PARLIAMENTARY HISTORY FOR THE TITLE CONDITIONS (SCOTLAND) ACT
2003**