

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT

8. The Act largely implements the recommendations of the Scottish Law Commission *Report on Real Burdens* (Scot Law Com No 181), published on 26 October 2000. It provides a re-statement and clarification of the law of real burdens. The Act stipulates rules for the creation, enforcement and extinction of real burdens, and special rules for community burdens and manager burdens. Burdens validly created under the old law will remain valid burdens – the legal effect will remain the same. No valid burdens will disappear as a result of the Act, though it provides a mechanism for getting rid of obsolete burdens. It should become easier to find out who has the right to enforce burdens.
9. The Act achieves **greater clarity in the law**. It **reduces the number of outdated burdens** by making it easier to discharge or vary them. It creates a framework for the way in which individuals may impose their own controls on property. The Act provides default rules for a number of areas where property may not be fully regulated by title deeds. This is intended to improve the management of property in order to allow repair work to be carried out when required.
10. The Act is in 11 Parts:

Part 1: Real burdens: general

11. This Part codifies the existing law and introduces some changes such as a ‘sunset rule’ (with the option of renewal) for burdens over 100 years old. It sets out how to create a real burden, what its contents may be, and how it may be terminated. These rules apply to existing burdens as well as burdens to be created in the future.

Part 2: Community burdens

12. This Part deals with burdens which apply to communities in the sense of groups of properties which have a common scheme of burdens. These communities have common or similar burdens which apply to all the units within them, and which can be mutually enforced.

Part 3: Conservation and other personal real burdens

13. This Part sets out the rules for conservation and other personal real burdens. These burdens are of public benefit.

Part 4: Transitional: implied rights of enforcement

14. **Part 4** abolishes enforcement rights implied by common law but provides a preservation procedure and recreates some of these rights with a statutory basis. In future it will not be possible to create implied rights.

Part 5: Real burdens: miscellaneous

15. This Part deals with a variety of different issues. They include the power to create a new legal category of burden called a manager burden. This burden will allow a developer to keep control of a group of properties while they are being developed.

Part 6: Development Management Scheme

16. This Part makes provision for a model Development Management Scheme, based upon the Management Scheme B contained in the Law Commission's *Report on the Law of the Tenement* (Scot Law Com No. 162). The Scheme is not confined to tenements, and can be adapted for use in other developments with shared facilities.

Part 7: Servitudes

17. This Part of the Act realigns the boundary between servitudes and real burdens.

Part 8: Pre-emption and reversion

18. This Part of the Act modifies the rules for pre-emption, and rights of reversion arising under various statutory provisions.

Part 9: Title conditions: powers of Lands Tribunal

19. This Part of the Act sets out the powers of the Lands Tribunal. The existing jurisdiction is restated, with some modifications.

Part 10: Miscellaneous

20. This Part of the Act contains miscellaneous provisions, including provision on compulsory purchase powers. It also amends the existing legislation on the ranking of standard securities.

Part 11: Savings, transitional and general

21. This Part of the Act lists the various savings and transitional arrangements pertaining to the Act, and the interpretation, short title and commencement provisions.