

# TITLE CONDITIONS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1: Real Burdens: General

##### *Section 1: The expression "real burden"*

22. *Section 1* defines 'real burden', and introduces the terms 'benefited property', 'burdened property' and 'personal real burden'.
23. *Subsection (1)* re-states, but does not change, the current law concerning real burdens. A **real burden** is an obligation affecting land or buildings. It is a condition of ownership which runs with the land. The word 'real' is used to distinguish this sort of obligation from a 'personal' obligation, such as a contract. A personal real burden is, despite the name, not a 'personal' obligation: it is a real burden and as such must be an obligation affecting land or buildings. A personal real burden is an encumbrance on land but, unlike other real burdens, is constituted in favour of a person rather than in favour of the owner of other land in that person's capacity as owner of that land.
24. The land that benefits from the condition, and whose owner is able to enforce the *burden*, is called the **benefited property**. Except for personal real burdens which are limited to the special types of burden listed in subsection (3), there must always be a benefited property; and the holder of a burden is the person who for the time being is the owner of that property. Viewed from the position of the holder, a real burden is a real right. The benefited property must be 'land' (defined in section 122(1)). The benefited property will commonly be neighbouring land. The definition of 'land' does not generally include a superiority interest, the estate of *dominium directum*, however for the purposes of the definition of real burden does include the estate of *dominium utile*. This is to include feudal burdens created before the appointed day within the provisions of the Act. Following the abolition of the feudal system it will no longer be possible for real burdens to be created for the benefit of feudal superiorities. In terms of section 2 of the 2000 Act not only do all existing superiority interests in land cease to exist but it becomes impossible to create a new feudal estate.
25. *Subsection (2)* gives names to the properties affected, or benefited, by real burdens. The land subject to the burden will be known as the '**burdened property**'.
26. *Subsection (3)* provides 8 exceptions to the rule expressed in subsection (1) that burdens must be in favour of other land. It will be possible in future to create burdens that directly favour a person without reference to a benefited property. These are personal real burdens. Personal real burdens represent a new category of right but the category is limited to the types of burdens set out in subsection (3), namely: conservation burdens, rural housing burdens, maritime burdens, economic development burdens, health care burdens, manager burdens, personal pre-emption burdens and personal redemption burdens.
27. Personal pre-emption burdens and personal redemption burdens cannot be created in the future. They exist as a limited category of former feudal burdens converted by notice

*These notes relate to the Title Conditions (Scotland) Act  
2003 (asp 9) which received Royal Assent on 3 April 2003*

registered under section 18A of the 2000 Act. Some personal pre-emption burdens may become rural housing burdens if held by a rural housing body (see the note on section 43). Personal real burdens are the subject of Part 3 of the Act, although manager burdens are primarily regulated by section 63.