

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

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Real Burdens: General

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

96. *Section 17* makes it clear that to the extent that a burden is unenforceable it is extinguished. For a burden to be enforceable there must in terms of section 8(1) be someone with both title and interest to enforce it. Whether a person has interest is determined by the test set out in section 8(3) and is particular to each set of circumstances that arise. *Section 17* also supplements section 16 which assumes that there will be someone who has interest to enforce. That section would not operate to extinguish a burden (to the extent of the breach) if there is no-one with interest to enforce to give active or passive consent. As the provision has a wider application than just the circumstances envisaged by section 16 it merits a separate section of its own.