

*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 19: Confusio not to extinguish real burden

105. A real burden (usually) requires both a burdened and a benefited property (section 1(1)), but there is no requirement that the properties be in separate ownership. The term 'confusio' is used to describe the situation where the benefited and burdened proprietors are the same person. Section 19(a) resolves a doubt by making clear that a burden is not extinguished by confusion. This means that the owner of both properties will be able to enforce an obligation against a tenant under section 9(2). Paragraph (b) gives an equivalent rule for personal real burdens.