

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Real Burdens: General

Section 6: Further provision as respects creation

54. *Section 6* makes a necessary, if limited, provision for the creation of burdens by reference to a deed of conditions registered before the appointed day. Schedule 15 of the Act repeals section 32 and schedule H of the Conveyancing (Scotland) Act 1874 which are the statutory provisions under the current law which allow burdens to be set out in a deed of conditions and then to be imported by reference into a subsequent conveyance. Section 4(1) makes a different but equivalent provision for the future. Section 6 allows deeds imposing real burdens after the appointed day to do so by reference to a deed of conditions registered before the appointed day. “Deed of conditions” is defined in section 122(1).
55. *Subsections (1) and (2)* allow an owner of the land which is to become the burdened property to create a real burden by importing the terms of the burden into the deed to be registered after the appointed day from a deed of conditions. “Owner” is defined in section 123. The definition of deed of conditions in section 122(1) makes it clear that this term is used only to refer to deeds executed under section 32 of the 1874 Act which are registered before the appointed day. It is sufficient when importing burdens to use the form of words in schedule 1. It should be noted that schedule 1 is cast in the language of the Act and differs somewhat from the form of words in schedule H of the 1874 Act (to be repealed by schedule 15 to the Act). The same considerations however arise in completing the reference and the amendment to section 8(5) of the Conveyancing (Scotland) Act 1924 by paragraph 3 of schedule 14 to the Act applies the same notes for completion to the new form set out in schedule 1 as were applied to the form it replaces.
56. *Subsection (3)* provides that, as for section 4, it is not competent to create a burden over a right of ownership held pro indiviso.