

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Miscellaneous

Section 111: Amendment of Conveyancing and Feudal Reform (Scotland) Act 1970

436. *Section 111* amends section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970 which regulates the ranking of standard securities following service of a notice by a subsequent security holder. Under the existing law, it is possible that when a later creditor gives notice under section 13, their debt will gain precedence over the possible claim to be made by the seller under a clawback agreement secured by a standard security. Typically a clawback agreement may provide that if a certain event occurs (such as planning permission for change of use) the seller will get a further financial payment. This is because the 1970 Act stipulates that security holders will only be ranked in respect of ‘advances’ made before subsequent securities. In the case of a clawback agreement, the standard security does not secure ‘advances’ but rather a future debt.
437. By replacing ‘advances’ with a wider term, ‘debt’, the amendment makes clear that section 13 applies to debts of all kinds (including, for example, clawback). The amendment takes effect on the day following Royal Assent (section 129(3)).