

# TITLE CONDITIONS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 11: Savings, Transitional and General**

##### *Section 119: Savings and transitional provisions etc.*

493. The savings and transitional provisions contained in this section have, for the most part, already been discussed in the appropriate context. Only a few need be mentioned here.
494. As *subsection (1)* acknowledges, the division between the old law and the new is, usually, the time of registration of the deed in question. Burdens discharged, varied or created by deeds registered before the appointed day are governed by the old law. Deeds registered on or after the appointed day are governed by the provisions of the Act. Section 4(1), for example, provides that a real burden is created ‘by duly registering’ the constitutive deed. Similarly, section 15(1) provides that a burden is discharged ‘by registering’ a deed of discharge. Sometimes, as with the creation of real burdens, the new law imposes more exacting standards than the old; but, as subsection (1) makes clear, the new standards are to apply only prospectively.
495. The Act, following the common law, requires the use of a deed for a number of juridical acts in relation to real burdens — most notably creation, variation and discharge. Strictly, section 3(1) of the 1979 Act does not: in other words, if a real burden is entered on (or deleted from) the Land Register, the entry or deletion is legally effective under that provision notwithstanding the absence of a valid underlying deed. The Register would then be inaccurate, however, and vulnerable to rectification under section 9 of the Act. The purpose of *subsection (2)* is to preserve this rule of land registration.
496. **Section 10** provides for circumstances in which a former owner will retain liability in respect of an obligation due when that person ceased to be owner. *Subsection (5)* disapplies this new rule where the transfer of ownership took place before the appointed day.
497. *Subsection (6)* provides that a breach of a real burden occurring before the appointed day cannot be subject to the new provisions for acquiescence made by section 16.
498. By virtue of *subsection (7)*, contractual liability will continue to exist in parallel to the terms of a real burden created in a deed registered before the appointed day. However, community burdens are excepted from this: any incidental contractual liability that duplicates a community burden will cease, regardless of the date of creation.