

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Community Burdens

Section 25: The expression “community burdens”

127. This section introduces Part 2 of the Act, which is concerned with community burdens. The label ‘community burden’ is a new term, but the types of burden that can be included under this name already exist in large numbers. The rules in Part 2 for community burdens are essentially designed to allow burdens affecting communities to be governed by majority rule. ‘Communities’ can take a variety of forms, for example, modern housing estates, tenements, terraces, sheltered and retirement housing and business parks. The term ‘community’ is used in the Act in a technical sense (for which see section 26(2)). A community is a group of four or more properties all subject to the same or similar burdens and which can be mutually enforced. Mutually enforced means that the owner of each property in the community will be able to enforce all or at least some of the burdens against the others. Part 2 applies to all community burdens, whether created before or after the Act comes into force (section 119(10)).
128. *Subsection (1)* defines ‘community burdens’. Its essence is the mutual enforceability of common burdens. A common scheme refers to the imposition of burdens that are normally, but not necessarily, exactly the same for each property. Community burdens only exist where burdens are imposed under a common scheme on four or more units and each of those units can enforce all or some of those burdens against the others. The meaning of ‘unit’ is given in section 122(1).
129. *Subsection (2)* is included to ensure that there is no doubt that where burdens have been imposed under a common scheme in relation to a sheltered or retirement housing development the fact that no burdens may have been imposed on a unit retained for special use (typically as a warden’s flat) would not prevent the whole development from being a community for the purposes of Part 2 of the Act. Section 26(2)(b), which defines the term ‘community’ in the legal sense used by the Act expressly provides that a unit, such as a warden’s flat, that is not subject to community burdens is nevertheless part of the community. This is an exception to the general rule that to form part of the community it is necessary for the unit to be a burdened property under the common scheme as well as a benefited property.