

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Community Burdens

Section 26: Creation of community burdens: supplementary provision

130. Community burdens are real burdens and are generally subject to the same rules as other real burdens. Section 2 makes general provision as to what a real burden may do. *Subsection (1)* amplifies those provisions by giving a non-exhaustive list of possible content for community burdens. This is in recognition that communities may require a degree of regulation and management to put it beyond doubt that certain obligations can be validly created as community burdens. There is an equivalent provision in section 3(4) to make it clear that a community burden may be for the benefit of the community rather than individual units. The meaning of ‘manager’ is given in section 122(1).
131. *Subsection (2)* defines ‘community’. This refers back to the definition of “community burdens” in section 25. A community is made up of units all burdened with obligations imposed under the same common scheme. It comprises the units which can enforce or are burdened by some - not necessarily all - of the burdens imposed under the common scheme. This means that a community remains the same notwithstanding that one or more units may cease over time to be subject to or entitled to enforce a particular burden. This may happen, for example, if the owner of a burdened property obtains a discharge. Paragraph (b) takes account of the fact that a unit in sheltered or retirement housing which is used in a special way (for example as a warden’s flat) might not itself be subject to the burdens. Nonetheless it is part of the community, and is, for example, counted for the purposes of majority decision-making (for which see sections 28 to 37).