

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 Conservation and Other Personal Real Burdens

Section 46: Health care burdens

208. This section introduces a new category of personal real burden to be known as “health care burdens”. These burdens may be created by anyone but can only be in favour of a National Health Service trust or the Scottish Ministers. National Health Service trusts are bodies established by order under section 12A of the National Health Service (Scotland) Act 1978. It will only be possible to create such a burden for the purpose of promoting the provision of facilities for health care. Health care burdens are included in the definition of personal real burdens in section 1(3). As a result, the holder has a presumed interest to enforce, and the burden need not operate in favour of other land. Health care burdens can be created where land is being sold but it is intended that it should continue to be used for health care purposes. This could, for example, occur where land is being sold to a developer to build accommodation for hospital staff and nurses. A health care burden could allow the health body to ensure that the land is developed for that purpose, and to secure compensation if another type of development occurs.
209. Section 18C of the 2000 Act, as inserted by section 114 of this Act, will allow a feudal burden imposed in the past that meets the health care criteria to be converted into a health care burden. The form of notice to convert the burden will be contained in schedule 5C of the 2000 Act (inserted by schedule 13 of this Act).
210. *Subsection (2)* provides that if someone other than a National Health Service trust or the Scottish Ministers wish to create a health care burden they must first obtain the consent of the body which it is intended will hold the right to enforce the burden.
211. *Subsection (3)* allows National Health Service trusts (or Scottish Ministers) to include a clawback condition so that they will be able to receive a further payment if the value of the land increases, for example due to a change in use. As with economic development burdens, it is not competent to create an obligation to make a periodical payment as a health care burden. Periodical payments under title conditions are prohibited by section 2 of the Land Reform (Scotland) Act 1974 (amended by paragraph 6 of Schedule 14) except where it is a payment in defrayal of or contribution towards some continuing cost related to the land.
212. *Subsection (4)* prohibits the creation of a standard security over a health care burden. Further explanation of this can be found in the note on subsection (3) of section 38 which deals with conservation burdens.
213. *Subsection (5)* imports the provisions on enforcement where there is no completed title and on completion of title which apply to conservation bodies.

*These notes relate to the Title Conditions (Scotland) Act
2003 (asp 9) which received Royal Assent on 3 April 2003*

214. *Subsection (6)* provides that health care facilities include ancillary facilities, for example, accommodation for staff would be an ancillary facility to a hospital.