

# TITLE CONDITIONS (SCOTLAND) ACT 2003

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 4: Transitional: Implied Rights of Enforcement

##### *Section 50: Preservation*

221. *Section 50* deals with implied rights *other* than those which arise in relation to a burden imposed under a common scheme affecting both burdened and benefited property (see subsection (6)). In effect this means that the notice of preservation procedure in *section 50* is available for what can informally be described as neighbour burdens. This is a convenient shorthand term, but not one used in the Act. A neighbour burden is a burden where the benefited property is not also subject to the burden and typically arises on the sale of part of a larger area of land. These burdens will appear in the title of the property which has been sold, the **burdened property**, but they may not specify what the **benefited property** is.
222. *Section 50* allows an owner of land who benefits from a neighbour burden of this kind to save the right to enforce. Any owner (including a *pro indiviso* owner) of property, to which enforcement rights attach, may preserve those rights by registration of a notice of preservation during the ten years immediately following the appointed day. The notice would have to identify the benefited and the burdened property. If no notice is registered within that timescale, the right of enforcement would be extinguished by section 49 at the end of the ten year period.
223. *Subsection (1)* provides that, where a notice is duly registered, the enforcement rights are preserved, and the property retains its status as a benefited property at the end of the ten year period.
224. *Subsection (2)* specifies the content of a notice of preservation. A statutory form is given in schedule 7. As paragraphs (a), (b) and (d) make clear, a notice may be restricted to certain burdens only, or to a certain part of the benefited or burdened properties. A title completed by registration is not required (see the definition of ‘owner’ in section 123(1)), but in that case paragraph (c) requires that the midcouples be listed. The meaning of ‘midcouples’ is given in section 122(1). Paragraph (e) requires, in effect, an explanation of why the land is considered to be the benefited property under the current law.
225. Consistently with section 4(5) (for new burdens), *subsection (3)* requires dual registration against both the benefited and burdened properties.
226. *Subsection (4)* provides that the notice must be sworn or affirmed before a notary public. In the normal case this must be done by the owner personally, but subsection (5) sets out some exceptions. Subsection (5)(b) should be read with schedule 2 to the Requirements of Writing (Scotland) Act 1995, which identifies who may sign on behalf of companies and other juristic persons. ‘Notary public’ is given an extended meaning, in relation to overseas execution, by section 122(1).

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

227. *Subsection (6)* excludes from the section implied rights which have arisen in relation to common scheme burdens, for which separate provision is made by sections 52 to 54.
228. [Section 115](#), referred to in *subsection (7)*, makes further provision as to notices of preservation (and of converted servitude).