

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Real Burdens: Miscellaneous

Section 59: Effect of extinction etc. on court proceedings

271. **Part 5** contains provisions on a number of miscellaneous matters affecting real burdens. The first of those, *section 59*, provides that real burdens cannot be enforced after (or to the extent that) they have been extinguished even although the breach in question occurred prior to extinction. Paragraphs (a) and (b) prevent benefited proprietors from attempting to enforce burdens that have been extinguished. It makes no difference if the breach occurred before the appointed day. Paragraph (c) makes clear that an interdict, or order for specific implement, will be deemed to have been reduced or recalled when the burden is extinguished. There is a partial exception for proceedings concluding for the payment of money, whether in relation to a debt or by way of damages. Decrees for payment of money (for example in relation to the cost of common repairs) obtained before the day on which the burden is discharged will continue to be enforceable thereafter.