

# TITLE CONDITIONS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 6: Development Management Scheme**

##### *Section 73: Disapplication*

306. Once applied to a development by a deed of application under section 71, the Scheme continues to apply unless or until it is formally disappplied. Disapplication means removing the Scheme completely so that it no longer affects all or part of the development. Disapplication is to be distinguished from the discharge or variation of individual rules of the Scheme. *Subsection (1)* provides a mechanism to disapply the Scheme. Essentially a Development Management Scheme is disappplied by registering a deed of disapplication against the development. There is no special form of deed required. The deed is granted by the owners association for the development in accordance with the Scheme. For example the Scheme may provide for the Scheme only to be disappplied following a special majority of owners at a general meeting.
307. *Subsection (2)* enables the deed of disapplication not only to disapply the Development Management Scheme but to impose real burdens to replace the Scheme. The deed of disapplication is a constitutive deed but the normal requirements of section 4 are relaxed to allow the owners association rather than all the owners of the individual parts of the development to grant the deed.
308. *Section 74* requires the owners association to intimate a proposal to disapply the Development Management Scheme to all the owners of the individual units in the development. In terms of section 74(3) each owner has 8 weeks in which to object to the disapplication of the Scheme by making an application for preservation of the Scheme to the Lands Tribunal. *Subsection (3)* introduces safeguards for the owners of units who may not wish to see the Development Management Scheme disappplied. Registration of a deed of disapplication will not either disapply the Scheme nor create real burdens unless it is endorsed with a certificate from the Lands Tribunal stating either that no applications for preservation of the Scheme have been received by the Tribunal or any such application has been withdrawn. If an application is made to the Tribunal for preservation of the Scheme then it is granted as of right if not opposed (section 99). If the application for preservation fails then the Scheme is disappplied not by registration of the deed of disapplication but by registration of the order of the Tribunal.
309. *Subsection (4)* means that before submitting the deed of disapplication for registration the owners association must swear or affirm before a notary public (and endorse the deed accordingly) as to the date on which the objection period expires and that section 74 has been complied with. *Subsection (5)* means that an authorised person may so swear or affirm for the owners association.