

# TITLE CONDITIONS (SCOTLAND) ACT 2003

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 7: Servitudes**

##### ***Section 76: Disapplication of requirement that positive servitude created in writing be of a known type***

318. Unlike burdens, servitudes do not under the current law have to be recorded, and it is possible for them to arise by implication or prescription. To regulate their use, servitudes are restricted into certain types and categories by a fixed list (*numerus clausus*) that has been derived from Roman law. Because registration is not currently required, the list offers some assurance that any possible servitudes on land are limited in type. As registration will now be required for servitudes created by deed, [section 76](#) provides that these servitudes will not have to fit into the list. The fixed list remains in place for deeds not created by registered deed.
319. Even without the fixed list, the question of what may constitute a valid servitude is subject to a number of limitations. *Subsection (2)* prohibits the creation of a servitude that is repugnant with ownership. This mirrors the provision for real burdens contained in section 3(6).