

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

# TITLE CONDITIONS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### ***Section 78: Discharge of positive servitude***

321. Under the present law a deed discharging a servitude does not have to be registered. *Section 78* introduces a requirement of registration where the servitude appears on the register against the *burdened* property. The discharge need not be registered against the benefited property, but section 105 gives the Keeper discretion to make consequential amendments to the benefited property's title sheet. Registration will be required for any servitude that appeared on the title sheet of a burdened property, regardless of how the servitude had come to be entered on the title sheet (i.e. if it had been noted in the title sheet as anticipated by paragraph (b) of the section). Section 78 does not apply to discharges executed before the appointed day (section 119(8)). Further, it does not affect other methods of extinguishing a servitude, such as negative prescription or confusion.