

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: Servitudes

Section 80: Negative servitudes to become real burdens

323. This is the first of two transitional provisions consequential on the realignment of the boundary between real burdens and servitudes. *Section 80* provides for the conversion of all existing negative servitudes into real burdens.
324. *Subsection (1)* provides for the automatic conversion of negative servitudes into negative burdens (section 2(2)(b) defines a negative burden as an obligation to refrain from doing something). This real burden is referred to as a ‘converted servitude’ in section 80.
325. *Subsections (2) and (3)* provide for the extinction after ten years of all negative servitudes (now negative burdens) which were not, before the appointed day, registered against the burdened property. The delayed extinction is to give the opportunity to register a notice under subsection (4).
326. *Subsection (4)* provides the mechanism to preserve a converted servitude during the ten years beginning with the appointed day. This is achieved by the owner of the benefited property registering a notice of converted servitude in approximately the same form as contained in schedule 9. Registration of this notice means that the converted servitude is not extinguished under subsection (2). Any owner, including a *pro indiviso* owner, may register. This procedure is used where the converted servitude is not already registered against the burdened property at the appointed day. Where the servitude is already registered, subsection (3) will apply to preserve it.
327. *Subsection (5)* specifies the content of a notice of converted servitude. A statutory form is given in schedule 9. The notice may be restricted to a part only of the benefited or burdened properties (see paragraphs (a) and (b)). 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. In Land Register cases the Keeper will no doubt wish to inspect the midcouples. The meaning of ‘midcouples’ is given in section 122(1) (as a link in title used in a deduction of title under the Conveyancing (Scotland) Act 1924). Paragraph (f) is the equivalent of section 50(2)(e) and avoids the need for a separate notice of preservation under that provision.
328. Consistent with section 4(5) (for new real burdens), *subsection (6)* requires dual registration of a notice against both the burdened and benefited property.
329. *Subsection (7)* imports the requirement of section 50(4) and (5) that the notice be sworn or affirmed before a notary public.
330. *Section 115*, referred to in *subsection (8)*, makes further provision as to notices of converted servitude (and of preservation).