

# TITLE CONDITIONS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### ***Section 81: Certain real burdens to become positive servitudes***

331. In general obligations allowing limited use of the burdened property are positive servitudes. *Subsection (1)* converts real burdens consisting of a right to enter or make use of the burdened property into positive servitudes after the appointed day. This is the partner to the conversion of negative servitudes into burdens in section 80. Section 2(1) prevents the creation in future of rights to enter or use property as real burdens other than where they are ancillary burdens (see section 2(3) and (4)).
332. Paragraph (a) of *subsection (2)* makes clear that section 81 does not apply to feudal burdens which are extinguished on the appointed day by section 17(1) of the 2000 Act. Paragraph (b) excludes by far the most common case of real burdens of entry and use, namely those burdens ('ancillary burdens': see section 2(4)) whose purpose is ancillary to some other type of real burden. The exclusion is made necessary by the fact that ancillary burdens are permitted in the future by section 2(3). These ancillary rights exist where the right to enter or use the burdened property is incidental to another condition.