



# Title Conditions (Scotland) Act 2003

## 2003 asp 9

### PART 7

#### SERVITUDES

##### *Positive servitudes*

#### **75 Creation of positive servitude by writing: deed to be registered**

- (1) A deed is not effective to create a positive servitude by express provision unless it is registered against both the benefited property and the burdened property.
- (2) It shall be no objection to the validity of a positive servitude that, at the time when the deed was registered as mentioned in subsection (1) above, the same person owned the benefited property and the burdened property; but, notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.), the servitude shall not be created while that person remains owner of both those properties.
- (3) Subsection (1) above—
  - (a) is subject to section 3(1) of the Prescription and Limitation (Scotland) Act 1973 (c. 52) (creation of positive servitude by 20 years' possession following execution of deed); and
  - (b) does not apply to servitudes such as are mentioned in section 77(1) of this Act.

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

- (1) Any rule of law that requires that a positive servitude be of a type known to the law shall not apply in relation to any servitude created in accordance with section 75(1) of this Act.
- (2) Nothing in subsection (1) above permits the creation of a servitude that is repugnant with ownership.

**77 Positive servitude of leading pipes etc. over or under land**

- (1) A right to lead a pipe, cable, wire or other such enclosed unit over or under land for any purpose may be constituted as a positive servitude.
- (2) It shall be deemed always to have been competent to constitute a right such as is mentioned in subsection (1) above as a servitude.

**78 Discharge of positive servitude**

A positive servitude—

- (a) which has been registered against the burdened property; or
- (b) which has been noted in, or otherwise appears in, the title sheet of that property,

is discharged by deed only on registration of the deed against the burdened property.