



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 1

REAL BURDENS: GENERAL

Meaning and creation

2 Affirmative, negative and ancillary burdens

- (1) Subject to subsection (3) below, a real burden may be created only as—
 - (a) an obligation to do something (including an obligation to defray, or contribute towards, some cost); or
 - (b) an obligation to refrain from doing something.
- (2) An obligation created as is described in—
 - (a) paragraph (a) of subsection (1) above is known as an “affirmative burden”; and
 - (b) paragraph (b) of that subsection is known as a “negative burden”.
- (3) A real burden may be created which—
 - (a) consists of a right to enter, or otherwise make use of, property; or
 - (b) makes provision for management or administration,but only for a purpose ancillary to those of an affirmative burden or a negative burden.
- (4) A real burden created as is described in subsection (3) above is known as an “ancillary burden”.
- (5) In determining whether a real burden is created as is described in subsection (1) or (3) above, regard shall be had to the effect of a provision rather than to the way in which the provision is expressed.