

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Community Burdens

Section 32: The expressions “affected unit” and “adjacent unit”

150. An individual owner, or a small group within the larger community, may wish to discharge or vary one of the burdens affecting their property. Alternatively, a majority group within the community may wish to vary or discharge the burdens affecting the whole community, for example, to update or correct an existing deed of conditions. Under the present law, a deed of variation or discharge, even for a single unit, must be granted by the owners of all the units in the community. Sections 33 to 36 introduce two new mechanisms which may be used to vary or discharge a community burden in circumstances where this is not provided for in the relevant title deeds. A variation or discharge under sections 33 or 35, if unopposed, can affect the enforcement rights of the whole community in respect of one or several units even although not all owners in the community have signed the deed. A section 33 deed of variation or discharge may also vary the burdens affecting, or even impose new burdens on, properties in the community without the owners of those units signing the deed. This is not possible for a section 35 deed of variation or discharge as the owners of the affected units must sign. (See section 35(1)). If opposed, such a deed can still operate as an “ordinary” deed of discharge or variation to discharge or vary the enforcement rights of those units whose owners have all signed the deed. A deed of discharge or variation under section 33 is particularly suitable where there are changes to be made to the burdens affecting all or many of the units. A deed under section 35 is more suited to a variation or discharge of a burden affecting one or a few units only.
151. *Section 32* explains some of the terminology used in sections 33 to 36. ‘Communities’ consist exclusively of ‘units’ (section 26(2)). For the purposes of these sections ‘**affected** unit’ is used to describe the property/properties for which the burden is to be changed, i.e. the burdened property. An ‘**adjacent** unit’ is one that is near to an affected unit: it must be within 4 metres of the unit. The 4 metre distance is subject to section 125, which makes provision for disregarding any pertinent of either property and the width of any intervening road if less than 20 metres. Roads and pertinents are, however, ‘disregarded’ in different ways – see the note to section 125(b). ‘Discharge’ is the extinction of a burden, while ‘variation’ includes both changes to an existing burden to impose a new obligation (section 122(1)) and also the imposition of a new burden.