

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Real Burdens: General

Section 18: Negative prescription

97. *Section 18* makes an alteration to the law on prescription. The existing law of negative prescription provides that if a burdened proprietor breaches a burden, and the benefited proprietor takes no action, the burden will fall (to the extent of the breach) in 20 years. The prescription is interrupted if the breach is challenged by the benefited proprietor or acknowledged by a burdened proprietor. The change is made by a self-standing provision rather than (as in section 88) by amendment to the Prescription and Limitation (Scotland) Act 1973. But prescription is to operate in substantially the same way as under that Act, and subsection (3) applies some of the 1973 Act provisions.
98. *Subsection (1)* provides for extinction if a breach is unchallenged for a period of five years. As with acquiescence (section 16), the extinction is only to the extent of the breach. Paragraph (b) repeats the rule of the existing law that a claim or acknowledgement will interrupt the prescriptive period.
99. *Subsection (2)* provides a modification to the rule for pre-emptions and other options to acquire. For these obligations a single failure to convey (or, with pre-emptions, to offer to convey) results in the complete extinction of the burden. Any sale in breach of a right of pre-emption will extinguish the pre-emption within 5 years by virtue of negative prescription. This differs from the standard position in subsection (1) in that the obligation will be completely removed, and not merely to the extent of the breach. Subsection (6) modifies the application of subsection (2) as regards rural housing burdens. Where there is a failure to offer to convey to a rural housing body, the passage of 5 years with no relevant claim or acknowledgement will not extinguish the burden but will prevent any enforcement action being taken in respect of the particular failure.
100. *Subsection (3)* applies the definition of ‘relevant claim’ and ‘relevant acknowledgement’ (terms used in subsection (1)) used in the Prescription and Limitation (Scotland) Act 1973. Paragraphs (a) to (c) specify that for the purposes of section 18, the specified definitions in the 1973 Act will be modified so as to relate to real burdens and those with right to enforce them. The definition of ‘relevant acknowledgement’ in section 10 of the 1973 Act states that the burdened proprietor will be regarded as having acknowledged that the burden is still in force if he has acted to implement the obligation or has given a written acknowledgement that it subsists.
101. *Subsection (4)* applies to subsections (1) and (2) section 14 of the Prescription and Limitation (Scotland) Act 1973. Section 14 contains rules for the computation of prescriptive periods, for example, that such periods commence on the day following the event which triggers the prescriptive period, if that event falls at a time other than the beginning of the day. Subsection (1)(a) of section 14 is however excluded because it makes provision for time occurring before the commencement of the 1973 Act to be included in the computation of prescriptive periods. There is special provision in

*These notes relate to the Title Conditions (Scotland) Act
2003 (asp 9) which received Royal Assent on 3 April 2003*

subsections (5) and (7) for computing the prescriptive period in respect of any breach of a real burden which occurred before the appointed day when this section comes into force.

102. *Subsection (5)* relates to breaches of real burdens that occur before the appointed day when this section comes into force. Instead of 5 years, the prescriptive period for such breaches is to be the period described in subsection (7).
103. *Subsection (6)* modifies the application of subsection (2) in respect of rural housing burdens. See further the note to subsection (2).
104. *Subsection (7)* provides that the prescriptive period for breaches of real burdens that occur before the appointed day is to be 20 years, computing the period from the date of the breach, or 5 years, computing the period from the appointed day, whichever period expires earlier. This means that where a breach occurred more than 15 years before the appointed day, the prescriptive period will still be 20 years but no longer. If the breach occurred less than 15 years before the appointed day, the prescriptive period will expire 5 years after the appointed day.