

# TITLE CONDITIONS (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 11: Savings, Transitional and General**

#### ***Schedule 13: Amendment of Abolition of Feudal Tenure etc. (Scotland) Act 2000***

527. **Schedule 13** contains amendments to the 2000 Act. The amendments come into force on the day after Royal Assent (section 129(3)).

#### ***Paragraph 2.***

528. Section 17(1) of the 2000 Act extinguishes superiors' rights to enforce real burdens, subject to some savings. The amendments add further savings. Section 18A (on personal pre-emption burdens and personal redemption burdens), section 18B (on economic development burdens), section 18C (on health care burdens) and section 27A (on conservation burdens) are new sections inserted by section 114 of the Act. Sections 52 to 56 of the Act create new enforcement rights for existing burdens in place of the implied enforcement rights which are extinguished by section 49 of the Act. Section 56 replaces section 23 of the 2000 Act (which is repealed by schedule 15). The saving for manager burdens is the counterpart of section 63(10).
529. The change to paragraph (b) of section 17(1) is to ensure that it is only a person's right to enforce a burden as a feudal burden that is extinguished on the appointed day. If the same person can enforce a burden in another capacity, for example as the owner of nearby land or as the holder of a conservation burden, health care burden or economic development burden then this right to enforce is unaffected.
530. The introduction of the new paragraph (aa) into subsection (3) of section 17 ensures that where there is an ongoing action or an existing decree or interlocutor as at the appointed day in respect of a feudal burden then this will be unaffected if the right to enforce the burden is preserved under one of the provisions mentioned in section 17(1).

#### ***Paragraph 3.***

531. Sub-paragraph (a) makes consequential reference to the new provisions inserted by section 114 of the Act. The insertion of subsection 6A by sub-paragraphs (b) and (c) ensures that registration of a notice to reallocate a feudal burden under section 18 of the 2000 Act does not preserve a right to enforce a manager burden. Sub-paragraph (d) excludes sporting rights from the category of rights described as "rights to enter, or otherwise make use of, property" in section 18(7)(b)(i).

#### ***Paragraph 4.***

532. This alters the test to be applied by the Lands Tribunal when determining whether a superior may preserve a right to enforce a feudal burden by converting it into an ordinary burden under section 20 of the 2000 Act. The test is derived from the test for interest to enforce in section 8(3) of the Act.

**Paragraph 5.**

533. Section 25 of the 2000 Act provides that on reallocation of a real burden the right to enforce is subject to any counter-obligation. The reference to reallocation under section 23 of the 2000 Act (to be repealed) is replaced by a reference to reallocation under section 56 of the Act. A reference to reallocation of manager burdens is added.

**Paragraph 6.**

534. The amendment to section 27(3)(a) of the 2000 Act is consequential on the repeal (by schedule 15 of the Act) of section 26 of the 2000 Act and its replacement by section 38 of the Act. Section 27A is a new section inserted by section 114 of the Act.

**Paragraph 7.**

535. The amendments to subsections (1), (3) and (4) are consequential to the introduction by section 114 of the Act of new sections 18A, 18B, 18C and 27A into the 2000 Act. Section 42 of the 2000 Act provided that where a superior has a choice of several of the procedures under the 2000 Act that may be used to save a burden the various options are mutually exclusive. The new subsection (5) mirrors section 116 of the Act and permits feudal burdens to be preserved in favour of land outwith Scotland.

**Paragraph 8.**

536. Section 43 of the 2000 Act provides that the Keeper of the Registers does not have responsibility for determining whether the superior has complied with the notification requirements of section 41(3) or if the superior had the ability to enforce the right in question. The amendments are consequential upon the introduction of new sections 18A, 18B, 18C and 27A by section 114 of the Act.

**Paragraph 10.**

537. Sub-paragraph (a) alters the definition of conservation body in consequence of the repeal (by schedule 15 of the Act) of section 26 of the 2000 Act and its replacement by section 38 of the Act. Sub-paragraph (b) adds the new section 27A inserted by section 114 of the Act to the scope of section 49 of the 2000 Act. Sub-paragraphs (c) and (d) inserts definitions as a consequence of section 114. Sub-paragraph (e) ensures that sporting rights are not treated as real burdens for the purposes of Part 4 of the 2000 Act.

**Paragraph 11.**

538. This paragraph provides that where a holder of sporting rights has taken action to preserve them under section 65A of the 2000 Act, they will not be extinguished under section 54(1) of the 2000 Act.

**Paragraph 12.**

539. This amendment replaces the reference in section 56 of the 2000 Act to 'land obligation' with a reference to 'title condition'. The term 'land obligation' is used in sections 1 and 2 of the Conveyancing and Feudal Reform (Scotland) Act 1970 to identify the rights which are capable of discharge by the Lands Tribunal. Sections 1 and 2 of the 1970 Act are repealed by schedule 15 of the Act. The replacement term in the Act is 'title condition' (defined in section 122(1)). The change is one of name rather than of substance.

**Paragraph 13.**

540. Section 73 of the 2000 Act makes provision for the automatic translation of certain feudal terms which might be found in deeds or enactments dating from before the appointed day but having to be applied after that date. The amendments make some

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

minor changes to the timing of the provisions in section 73. The amendment in sub-paragraph (b)(iii) reflects the repeal of section 23 of the 2000 Act and its replacement by section 56 of the Act (which provides for the preservation and creation of rights to enforce facility burdens).

541. The new subsection (2A) inserted by sub-paragraph (c) provides that a provision in a document or in an entry in the Land Register which states that a real burden may be waived with the consent of a stated party shall be disregarded unless the reference in the document or entry is a reference to a superior and that reference is in terms of section 73(2) of the 2000 Act to be construed as a reference to the person entitled to enforce under one of the provisions listed in that subsection.

***Paragraph 14.***

542. The insertion of a subsection (2) into section 75 of the 2000 Act ensures that contractual obligations which were incidental to feudal burdens will only remain where the original vassal remains the owner of the property.

***Paragraph 15.***

543. This makes a minor change to the commencement provision to allow the Scottish Ministers to bring section 63 of the 2000 Act into force by order.

***Paragraph 16.***

544. This amendment inserts new schedules into the 2000 Act. Schedule 5A contains the form of notice to prospectively convert a real burden into a personal pre-emption burden or personal redemption burden. Schedules 5B and 5C contain the forms of notice to prospectively convert a real burden into an economic development burden or a health care burden respectively. The schedules include explanatory notes and notes for completion of the notice. See the new sections 18A, 18B and 18C of the 2000 Act as inserted by section 114 of the Act.

***Paragraph 17.***

545. This amendment substitutes note 1 in the notes for completion of the notice to schedule 8 to the 2000 Act (form of notice to preserve a conservation body or the Scottish Ministers' right to a real burden).

***Paragraph 18.***

546. This amendment inserts a new schedule 8A into the 2000 Act containing the form of notice nominating a conservation body or the Scottish Ministers to have title to enforce a real burden. The schedule includes an explanatory note and notes for completion of the notice. See the new section 27A of the 2000 Act as inserted by section 114 of the Act.

***Paragraph 19.***

547. This amendment inserts a new schedule 11A into the 2000 Act containing the form of notice to prospectively convert sporting rights into a tenement in land. The schedule includes an explanatory note and notes for completion of the notice. See the new section 65A of the 2000 Act as inserted by section 114 of the Act.

***Paragraph 20.***

548. This corrects a technical error.