



# Title Conditions (Scotland) Act 2003

## 2003 asp 9

### PART 1

#### REAL BURDENS: GENERAL

##### *Duration, enforceability and liability*

#### **11 Affirmative burdens: shared liability**

- (1) If a burdened property as respects which an affirmative burden is created is divided (whether before or after the appointed day) into two or more parts then, subject to subsections (2) and (4) below, the owners of the parts—
  - (a) are severally liable in respect of the burden; and
  - (b) as between (or among) themselves, are liable in the proportions which the areas of their respective parts bear to the area of the burdened property.
- (2) “Part” in subsection (1) above does not include a part to which the affirmative burden cannot relate.
- (3) In the application of subsection (1) above to parts which are flats in a tenement, the reference in paragraph (b) of that subsection to the areas of the respective parts shall be construed as a reference to the floor areas of the respective flats.
- (4) Paragraph (a) of subsection (1) above shall not apply if, in the constitutive deed, it is provided that liability as between (or among) the owners of the parts shall be otherwise than is provided for in that paragraph; and paragraph (b) of that subsection shall not apply if, in the constitutive deed or in the conveyance effecting the division, it is provided that liability as between (or among) them shall be otherwise than is provided for in that paragraph.
- (5) If two or more persons own in common a burdened property as respects which an affirmative burden is created then, unless the constitutive deed otherwise provides—
  - (a) they are severally liable in respect of the burden; and
  - (b) as between (or among) themselves, they are liable in the proportions in which they own the property.