



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 7

SERVITUDES

Positive servitudes

75 Creation of positive servitude by writing: deed to be registered

- (1) A deed is not effective to create a positive servitude by express provision unless it is registered against both the benefited property and the burdened property.
- (2) It shall be no objection to the validity of a positive servitude that, at the time when the deed was registered as mentioned in subsection (1) above, the same person owned the benefited property and the burdened property; but^{F1}... the servitude shall not be created while that person remains owner of both those properties.
- (3) Subsection (1) above—
 - (a) is subject to section 3(1) of the Prescription and Limitation (Scotland) Act 1973 (c. 52) (creation of positive servitude by 20 years' possession following execution of deed); and
 - (b) does not apply to servitudes such as are mentioned in section 77(1) of this Act.

Textual Amendments

- F1** Words in s. 75(2) repealed (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, [sch. 5 para. 43\(8\)](#) (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

Modifications etc. (not altering text)

- C1** S. 75 excluded (24.7.2006) by [Waverley Railway \(Scotland\) Act 2006 \(asp 13\)](#), [s. 44\(2\)](#) (with ss. 50(2), 51)
- C2** S. 75 excluded (15.1.2007) by [Glasgow Airport Rail Link Act 2007 \(asp 1\)](#), [s. 42\(2\)](#) (with s. 50)
- C3** S. 75 excluded (19.4.2007) by [Edinburgh Airport Rail Link Act 2007 \(asp 16\)](#), [s. 55\(2\)](#) (with ss. 52, 60)
- C4** S. 75 excluded (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\)](#), [ss. 37\(2\), 54\(2\)](#) (with ss. 48, 59)

Changes to legislation: There are currently no known outstanding effects for the
Title Conditions (Scotland) Act 2003, Section 75. (See end of Document for details)

- C5** S. 75 excluded (1.6.2010) by The Network Rail (Waverley Steps) Order 2010 (S.S.I. 2010/188), **art. 31(3)**
- C6** S. 75 excluded (11.4.2017) by The Network Rail (Glasgow Queen Street Station) Order 2017 (S.S.I. 2017/100), arts. 1, **33(2)** (with art. 37)
- C7** S. 75(1) excluded (3.2.2011) by Forth Crossing Act 2011 (asp 2), **ss. 27(2), 80(2)** (with ss. 69, 78); S.S.I. 2011/38, art. 2, sch.

Changes to legislation:

There are currently no known outstanding effects for the Title Conditions (Scotland) Act 2003, Section 75.