

11 May 2018



Your ref:
Our ref:

Dear Consultee

**DISCUSSION PAPER ON SECTION 53 OF THE TITLE CONDITIONS (SCOTLAND) ACT 2003
(DISCUSSION PAPER No 164)**

We invite comments on our Discussion Paper on Section 53 of the Title Conditions (Scotland) Act 2003, which has been published today on our website.

The Discussion Paper deals with an important aspect of the law on real burdens, previously considered in our Report on Real Burdens (Scot Law Com No 181).

Real burdens are a type of title condition affecting land, imposed on a burdened property or properties in favour of a benefited property or properties. They may relate to land of any type, including flats and houses, as well as commercial properties.

The Report on Real Burdens was implemented with modifications by the Title Conditions (Scotland) Act 2003. The 2003 Act was part of a series of legislative measures which abolished the feudal system and reformed Scottish land law. These came into force on 28 November 2004.

One modification is section 53 of the 2003 Act, which gives implied rights to property owners to enforce real burdens against other property owners, provided that the properties are “related” and are subject to a “common scheme” of burdens. Neither “related” or “common scheme” are defined but section 53(2) gives possible examples of when properties are related, such as flats in the same tenement.

We outline the background to section 53 in the Discussion Paper, and consider five criticisms which have been made of the provision:

- uncertainty
- complexity
- lack of publicity on the burdened property’s title
- over-generosity of application i.e. that it confers rights too widely
- drafting issues.

The discussion paper considers that the difficulties with section 53 concern principally the implementation of that policy, and sets out reform options on that basis. A key policy objective is to ensure that any replacement of section 53 is both clear and of certain effect.



Consultation is critical in all our law reform projects to ensure that the final recommendations contained in our report would, if implemented, result in law which is just, principled, responsive and easy to understand. We would therefore be grateful to receive your views on any or all of the questions in this Discussion Paper. They will be fully considered and analysed in the course of reaching our final conclusions.

The consultation period ends on 31 August 2018. Where possible, we would prefer the electronic submission of comments. You can use the electronic response form for this Discussion Paper on our website at <https://www.scotlawcom.gov.uk/publications/discussion-papers-and-consultative-memoranda/2010-present/>.

The form has a questionnaire format which allows you to comment on any of the paper's questions which interest you. The form can be downloaded and emailed to us at info@scotlawcom.gsi.gov.uk, as can comments in other electronic formats. Alternatively, you may prefer to send your comments on the Discussion Paper by using the general comments form to be found on the website Contact us page (<http://www.scotlawcom.gov.uk/contact-us/>).

Please note that information about this Discussion Paper, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with the 2002 Act. We may also (i) publish responses on our website (either in full or in some other way such as reformatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

Yours faithfully,

MALCOLM MCMILLAN
Chief Executive