

# **ABOLITION OF FEUDAL TENURE ETC. (SCOTLAND) ACT 2000**

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## **EXPLANATORY NOTES**

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#### *Commentary on Sections*

#### **Part 4: Real Burdens**

#### ***Section 19: Reallotment of real burden by agreement***

81. **Section 19** makes provision for the superior and vassal to enter into an agreement to maintain a burden in force in favour of land nominated in that agreement in such terms as may be agreed between the parties. This provides an opportunity for both parties to maintain a burden in place while also providing an opportunity to modify the terms of the real burden or any counter-obligation enforceable against the superior.
82. It is competent under the present law for superiors and vassals (as well as people not operating under feudal law) to "save" what are in effect feudal burdens by creating new, ordinary burdens in identical terms in a non-feudal document, such as a deed of conditions. This section does not affect that facility, but it provides a means whereby parties may act to save (in modified form if the parties so agree) former feudal conditions as ordinary real burdens which are of lasting mutual benefit as regards particular land of the parties.
83. **Subsection (1)** stipulates that a superior should serve a notice in the form specified in schedule 5 on the vassal intimating that he is seeking to enter an agreement to save a burden. This is to give the vassal some information to help him consider his position. The notice would not have to be sworn or affirmed and it would not be registered in the Land Register (or recorded in the Register of Sasines), so there will be no need for a conveyancing description to identify the title to the land nominated as the dominant tenement. The superior has until the appointed day for abolition to register the agreement in the Land Register (or record it in the Register of Sasines). Subsection (1) makes it clear that the superior and vassal may, by the agreement, modify the real burden or any counter-obligation relating to the real burden. It also makes clear that it is possible for parties to enter into an agreement without first having to complete title.
84. **Subsection (2)** sets out the content of the notice which must follow the statutory form given in schedule 6. Further provision in relation to counter-obligations referred to in *paragraph (d)* is made in section 25 (counter-obligations on reallotment).
85. **Subsection (3)** specifies the content of an agreement between the superior and the vassal to save a burden. If an agreement is entered into it will have to be a written document which expressly states that it is made under section 19.
86. **Subsection (4)** provides for registration (or recording) of the agreement against both the benefited and burdened property in either the Land Register or the Register of Sasines.

*These notes relate to the Abolition of Feudal Tenure etc. (Scotland)  
Act 2000 (asp 5) which received Royal Assent on 14 July 2000*

If the title to one property is in the Land Register and to the other in the Register of Sasines, it will be necessary to register (or record) the agreement in both registers.

87. On the appointed day for abolition, *subsection (5)* converts the feudal burden into an ordinary non-feudal burden in which the benefited property is the land nominated by the superior. It makes no difference if the superior no longer owns the land, but there must have been full compliance with subsections (1)(b) and (c), (3) and (4). The burden must still have been enforceable immediately before the date of abolition. This subsection makes clear that, where a superior has not completed title, the savings provisions operate in circumstances where the superior would be able to enforce the burden if he were to complete title.
88. *Subsection (6)* relates to circumstances where a person has not completed title. A person who has not completed title should be able to enter into an agreement to save a burden under section 19. In line with conveyancing requirements for deeds which are to be recorded in the Register of Sasines where a person has not completed title to land, that person should deduce title in the agreement. This subsection enables parties to enter into an agreement without first having to complete title. The clause of deduction of title would specify the last recorded title and the various links in title by which the person entering into the agreement has acquired right to the land.