

ABOLITION OF FEUDAL TENURE ETC. (SCOTLAND) ACT 2000

EXPLANATORY NOTES

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Commentary on Sections

Part 4: Real Burdens

Section 46: Duties of Keeper: Amendments relating to the extinction of certain real burdens

165. This section has 3 purposes. First, it makes clear that it is not competent to request or for a court or the Lands Tribunal to order the Keeper to delete real burdens extinguished under section 17 (extinction of superior's rights) from the Land Register for such period of years following the appointed day as may be specified in an order made by the Scottish Ministers. Even if the Keeper has been ordered by the court or the Lands Tribunal to remove a burden from the Land Register which is the subject of a notice or agreement which has been rejected for registration but which the former superior is seeking to have registered late under section 45, then the Keeper is prevented from removing the burden while it remains possible that the notice or agreement saving the burden may yet be registered (see subsection (3)).
166. Second, this section gives the Keeper temporary relief for a period to be determined by Scottish Ministers after the appointed day for abolition. A degree of discretion is allowed to the Keeper. He will be enabled, but not required, to enter extinguished feudal burdens into the Land Register when processing an application for first registration and will be at liberty to remove extinguished feudal burdens. This is to enable the Keeper to deal with applications for first registration of an interest in land without having to make a judgement as to whether or not a feudal burden had been extinguished or had been validly saved. This temporary relief is in operation for a period to be prescribed by order made by the Scottish Ministers subject to negative procedure.
167. Finally, although the Keeper will be entitled to remove extinguished burdens from the register at his discretion, *subsection (3)* makes it clear that he will not be entitled to do so when the burden in question is the subject of a notice or agreement which is before a court or the Lands Tribunal for a decision on its eligibility for registration. This will ensure no-one might purchase the subjects in ignorance of the burden.
168. *Subsection (4)* simply ensures consistency in the time periods under the provisions of sections 45 and 46.