



Abolition of Feudal Tenure etc. (Scotland) Act 2000

2000 asp 5

PART 6

MISCELLANEOUS

Miscellaneous

VALID FROM 28/11/2004

65 Creation of proper liferent

- (1) A proper liferent over land is created—
- (a) in a case where the right is registrable under section 2 of the Land Registration (Scotland) Act 1979 (c.33)—
 - (i) (unless the deed granting or reserving the right makes provision for some later date) on registration; or
 - (ii) (where provision is made for such a date and the right has been registered) on that date; or
 - (b) in any other case—
 - (i) (unless the deed granting or reserving the right makes provision for some later date) on recording of the deed in the Register of Sasines; or
 - (ii) (where provision is made for such a date and such deed has been so recorded) on that date.
- (2) This section is without prejudice to any other enactment, or rule of law, by or under which a proper liferent over land may be created.
- (3) In subsection (1)(a) above, “registrable” and “registration” have the meanings respectively assigned to those expressions by section 1(3) of the Land Registration (Scotland) Act 1979 (c.33).

Status: Point in time view as at 09/06/2000. This version of this cross heading contains provisions that are not valid for this point in time.

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- (4) The references, in subsection (1)(b) above, to a deed being recorded include references to a notice of title deducing title through a deed being recorded.

VALID FROM 01/11/2003

[^{F1}65A Sporting rights

- (1) Where a feudal estate of *dominium utile* of land is subject to sporting rights which are enforceable by a superior of the feu or which would be so enforceable were the person in question to complete title to the *dominium directum* the superior may, before the appointed day, by duly executing and registering against the *dominium utile* a notice in, or as nearly as may be in, the form contained in schedule 11A to this Act, prospectively convert those rights into a tenement in land.
- (2) The notice shall—
 - (a) set out the title of the superior;
 - (b) describe, sufficiently to enable identification by reference to the Ordnance Map, the land the *dominium utile* of which is subject to the sporting rights (or any part of that land);
 - (c) describe those rights; and
 - (d) set out the terms of any counter-obligation to those rights if it is a counter-obligation enforceable against the superior.
- (3) Before submitting any notice for registration under this section, the superior shall swear or affirm as is mentioned in subsection (4) of section 18 of this Act.
- (4) Subsection (5) of that section applies for the purposes of subsection (3) above as it applies for the purposes of subsection (4) of that section.
- (5) If subsections (1) to (3) above are, with subsection (4) of that section, complied with and immediately before the appointed day the sporting rights are still enforceable by the superior (or his successor) or would be so enforceable, or still so enforceable, were the person in question to complete title to the *dominium directum* then, on that day, the sporting rights shall be converted into a tenement in land.
- (6) No greater, or more exclusive, sporting rights shall be enforceable by virtue of such conversion than were (or would have been) enforceable as mentioned in subsection (5) above.
- (7) Where the *dominium utile* comprises parts each held by a separate vassal, each part shall be taken to be a separate feudal estate of *dominium utile*.
- (8) Where sporting rights become, under subsection (5) above, a tenement in land, the right to enforce those rights shall be subject to any counter-obligation enforceable against the superior immediately before the appointed day; and section 47 of this Act shall apply in relation to any counter-obligation to sporting rights as it applies in relation to any counter-obligation to a real burden.
- (9) In this section, “sporting rights” means a right of fishing or game.
- (10) This section is subject to section 41 of this Act.

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(11) Subsections (1) and (2)(a) of section 43 of this Act apply in relation to a notice submitted for registration under this section as they apply in relation to a notice so submitted under any of the provisions mentioned in those subsections; and paragraph (a) of subsection (3) of that section applies in relation to a determination for the purposes of subsection (5) of this section as it applies in relation to a determination for the purposes of any of the provisions mentioned in that paragraph.

(12) Subsections (1), (3) and (4) of section 46 of this Act apply in relation to sporting rights extinguished by virtue of section 54 of this Act as they apply in relation to a real burden extinguished by section 17(1)(a) of this Act.]

Textual Amendments

F1 S. 65A inserted (1.11.2003) by [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#), **ss. 114(5), 129(3)** (with [ss. 119, 121](#)); [S.S.I. 2003/455](#), art. 2(a)

VALID FROM 28/11/2004

66 **Obligation to make title deeds and searches available**

A possessor of title deeds or searches which relate to any land shall make them available to a person who has (or is entitled to acquire) a real right in the land, on all necessary occasions when the person so requests, at the person's expense.

67 **Prohibition on leases for periods of more than 175 years**

- (1) Notwithstanding any provision to the contrary in any lease, no lease of land executed on or after the coming into force of this section (in this section referred to as the “commencement date”) may continue for a period of more than 175 years; and any such lease which is still subsisting at the end of that period shall, by virtue of this subsection, be terminated forthwith.
- (2) If a lease of land so executed includes provision (however expressed) requiring the landlord or the tenant to renew the lease then the duration of any such renewed lease shall be added to the duration of the original lease for the purposes of reckoning the period mentioned in subsection (1) above.
- (3) Nothing in subsection (1) above shall prevent—
 - (a) any lease being continued by tacit relocation; or
 - (b) the duration of any lease being extended by, under or by virtue of any enactment.
- (4) Subsections (1) and (2) above do not apply—
 - (a) to a lease executed on or after the commencement date in implement of an obligation entered into before that date;
 - (b) to a lease executed after the commencement date in implement of an obligation contained in a lease such as is mentioned in paragraph (a) above; or
 - (c) where—

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- (i) a lease for a period of more than 175 years has been executed before the commencement date; or
- (ii) a lease such as is mentioned in paragraph (a) or (b) above is executed on or after that date,

to a sub-lease executed on or after that date of the whole, or part, of the land subject to the lease in question.

(5) For the purposes of this section “lease” includes sub-lease.

Modifications etc. (not altering text)

- C1** S. 67(1) excluded (15.1.2007) by Glasgow Airport Rail Link Act 2007 (asp 1), s. 30(4) (with s. 50)
- C2** S. 67(1) excluded (19.4.2007) by Edinburgh Airport Rail Link Act 2007 (asp 16), s. 36(5) (with ss. 52, 60)

VALID FROM 28/11/2004

68 Certain applications to Sheriff of Chancery

After section 26 of the Titles to Land Consolidation (Scotland) Act 1868 (c.101) there shall be inserted—

“26A Application for declarator of succession as heir in general or to specified lands

On an application being made by any person having an interest, the Sheriff of Chancery may, if satisfied that—

- (a) such deceased person as may be specified in the application died before 10th September 1964 and that person either—
 - (i) was domiciled in Scotland at the date of his death; or
 - (ii) was the owner of lands situated in Scotland to which the application relates; and
- (b) the applicant, or as the case may be such person as may be specified in the application, has succeeded as heir to that deceased, and is either—
 - (i) heir in general; or
 - (ii) heir to such lands as may be specified in the application,

grant declarator that the applicant, or as the case may be such person as may be specified in the declarator, is the heir in general or heir to the lands so specified.

26B Application for declarator of succession as heir to last surviving trustee under a trust

On an application being made under this section, the Sheriff of Chancery may, if satisfied that—

- (a) such deceased person as may be specified in the application was the last surviving trustee named in, or assumed under, a trust;
- (b) the trust provides for the heir of such last surviving trustee to be a trustee;

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- (c) either—
- (i) the trust is governed by the law of Scotland; or
 - (ii) lands subject to the trust and to which the application relates are situated in Scotland; and
- (d) the applicant has succeeded as heir to the deceased, grant declarator that the applicant is the heir of the deceased and accordingly is a trustee under the trust.

26C Construction of reference to service of heir

A reference in any enactment or deed to a decree of service of heir (however expressed) shall include a reference to a declarator granted under section 26A or 26B of this Act.”.

VALID FROM 28/11/2004

69 Application of 1970 Act to earlier forms of heritable security

- (1) Sections 14 to 30 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35) (which provisions relate to the assignation, variation, discharge and calling-up etc. of standard securities) shall apply (with the substitution of the word “heritable” for “standard ” and subject to such other modifications as may be necessary) as respects any heritable security granted before 29th November 1970 as those provisions apply as respects a standard security.
- (2) For the purposes of the said sections 14 to 30 (as modified by, or by virtue of, subsection (1) above), “heritable security” shall, with the modification mentioned in subsection (3) below, include a pecuniary real burden but shall not include a security constituted by *ex facie* absolute disposition.
- (3) The modification is that the reference to the date in subsection (1) above shall be disregarded.

VALID FROM 28/11/2004

70 Ownership of land by a firm

A firm may, if it has a legal personality distinct from the persons who compose it, itself own land.

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