

ABOLITION OF FEUDAL TENURE ETC. (SCOTLAND) ACT 2000

EXPLANATORY NOTES

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Commentary on Sections

Part 4: Real Burdens

Section 35: Claiming compensation

135. This section deals with the circumstances in which a right to compensation arises if a notice has been duly registered under section 33 (notice reserving right to claim compensation where land subject to development value burden). The general rule is that the right does not arise immediately after the date of abolition. It emerges only if something happens within 20 years after the appointed date of abolition which would have been a breach of the burden if it had still subsisted.
136. To deal with cases where there may have been a breach shortly before the appointed date for abolition so that the superior has not had time to enforce the burden, section 35 also allows the superior to claim compensation for breaches occurring within 5 years before the date of abolition.
137. *Subsection (1)* confers the right to compensation if the conditions set out in *subsection (2)* are satisfied. This subsection also makes it clear that it will not only be the person who registered the notice who can claim compensation, but anyone who subsequently obtains a right to all or part of the claim. Every party who has a right to claim must serve a notice to actually make the claim.
138. In setting out these conditions, subsection (2) makes it clear, in particular, that the real burden must have been enforceable by the superior before it was extinguished or rendered unenforceable by abolition. This is because many apparently valid real burdens are unenforceable. This subsection makes it clear that, where a superior has not completed title, the saving provisions will operate in circumstances where the superior would be able to enforce the burden if he were to complete title.
139. *Subsection (3)* regulates the way in which a claim is to be made. A notice in writing will be duly served on the owner and this will specify the amount of compensation claimed.
140. *Subsection (4)* lays down time limits within which a claim for compensation must be made. In the normal case the time limit is 3 years from the date of the occurrence which would have been a breach had the burden still subsisted. In the special transitional case of breaches in the 5 years before the appointed date of abolition, the time limit is 3 years from the date of abolition.
141. *Subsection (5)* makes it clear that in the case of a continuing breach or occurrence, the time runs from the date when the breach or occurrence first happens.