



Abolition of Feudal Tenure etc. (Scotland) Act 2000

2000 asp 5

PART 1

ABOLITION OF FEUDAL TENURE

1 Abolition on appointed day

The feudal system of land tenure, that is to say the entire system whereby land is held by a vassal on perpetual tenure from a superior is, on the appointed day, abolished.

2 Consequences of abolition

- (1) An estate of *dominium utile* of land shall, on the appointed day, cease to exist as a feudal estate but shall forthwith become the ownership of the land and, in so far as is consistent with the provisions of this Act, the land shall be subject to the same subordinate real rights and other encumbrances as was the estate of *dominium utile*.
- (2) Every other feudal estate in land shall, on that day, cease to exist.
- (3) It shall, on that day, cease to be possible to create a feudal estate in land.

3 Amendment of Land Registration (Scotland) Act 1979

The Land Registration (Scotland) Act 1979 (c. 33) shall be amended as follows—

- (a) in section 4(2) (applications for registration which are not to be accepted by the Keeper of the Registers of Scotland), after paragraph (a) there shall be inserted—
 - “(aa) it relates in whole or in part to an interest in land which by, under or by virtue of any provision of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5) is an interest which has ceased to exist;”;
- (b) in section 9 (rectification of Land Register of Scotland)—
 - (i) in subsection (3), at the beginning insert “Subject to subsection (3B) below;”;

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(ii) after subsection (3A) insert—

“(3B) Subject to subsection (3C) below, rectification (whether requisite or in exercise of the Keeper’s discretion) to take account of, or of anything done (or purportedly done) under or by virtue of, any provision of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), other than section 4 or 65, shall, for the purposes of subsection (3) above (and of section 12(3)(cc) of this Act), be deemed not to prejudice a proprietor in possession.

(3C) For the purposes of subsection (3B) above, rectification does not include entering or reinstating in a title sheet a real burden or a condition affecting an interest in land.”; and

(c) in section 12(3) (circumstances in which there is no entitlement to be indemnified by the Keeper), after paragraph (c) insert—

“(cc) the loss arises in consequence of—

(i) a rectification which; or

(ii) there being, in the register, an inaccuracy the rectification of which,

were there a proprietor in possession, would be deemed, by subsection

(3B) of section 9 of this Act, not to prejudice that proprietor;”.

PART 2

LAND TRANSFERS ETC. ON AND AFTER APPOINTED DAY

4 Ownership of land

(1) Ownership of land shall pass—

(a) in a case where a transfer is registrable under section 2 of the Land Registration (Scotland) Act 1979 (c. 33), on registration in the Land Register of Scotland;

(b) in any other case, on recording of a conveyance of the land in the Register of Sasines.

(2) This section is without prejudice to any other enactment, or rule of law, by or under which ownership of land may pass.

(3) In subsection (1) above—

(a) “conveyance” includes—

(i) conveyance by, or under, any enactment, rule of law or decree; and

(ii) a notice of title deducing title through a conveyance; and

(b) “registrable” and “registration” have the meanings respectively assigned to those expressions by section 1(3) of the Land Registration (Scotland) Act 1979 (c. 33).

5 Form of application for recording deed in Register of Sasines

- (1) Any application for the recording of a deed in the Register of Sasines shall be made by, or on behalf of, the person in whose favour the deed is granted; and it shall not be necessary to endorse on any deed a warrant of registration.
- (2) The Scottish Ministers may, after consultation with the Lord President of the Court of Session, make rules—
 - (a) prescribing the form to be used for the purposes of subsection (1) above; and
 - (b) regulating the procedure relating to applications for recording.

6 Deduction of title for unregistered land etc

In respect of any land—

- (a) a real right in which has never been registered in the Land Register of Scotland; and
- (b) title to which has never been constituted by the recording of a deed in the Register of Sasines,

title may be deduced from any person having ownership of the land.

PART 3

FEUDUTIES

Extinction of feuduties

7 Extinction on appointed day

Without prejudice to section 13 of this Act, any feuduty which has not been extinguished before the appointed day is extinguished on that day; and accordingly no payment shall be exigible, in respect of feuduty, for that day or for any period after that day.

8 Requiring compensatory payment

- (1) Where a feuduty is extinguished by section 7 of this Act, the person who was the superior in relation to the feu (that person being in the following provisions of this Part of this Act referred to as the (“former superior” may, within two years after the appointed day, duly serve on the person who was the vassal in relation to the feu (that person being in those provisions referred to as the (“former vassal” notice requiring that a payment specified in the notice (being a payment calculated in accordance with section 9 of this Act) be made to him by the former vassal; and any such payment is referred to in this Act as a “compensatory payment”.
- (2) In its application to a feuduty which was, at extinction, a *cumulo* feuduty, subsection (1) above shall be construed as relating to separate notice being duly served on each former vassal from whom payment is sought; and in that application, notice under that subsection shall be in (or as nearly as may be in) the form, with its Appendix, contained in schedule 1 to this Act.

Status: This is the original version (as it was originally enacted).

- (3) Except in the application mentioned in subsection (2) above, notice under subsection (1) above shall be in (or as nearly as may be in) the form contained in schedule 2 to this Act.
- (4) To any notice served under subsection (1) above shall be attached a copy of the explanatory note which immediately follows, as the case may be—
 - (a) the Appendix to the form in schedule 1; or
 - (b) the form in schedule 2,to this Act.
- (5) Subject to section 10 of this Act, if subsections (1) to (4) above are complied with, then within 56 days after due service on him a former vassal shall make the compensatory payment.
- (6) The reference in subsection (1) above to a notice being duly served shall be construed in accordance with section 11 of this Act.

9 Calculation of amount of compensatory payment

- (1) In calculating the compensatory payment in respect of which notice may be served under section 8(1) of this Act, there shall first be determined the sum of money which would, if invested in two and a half per cent. Consolidated Stock at the middle market price at the close of business last preceding the appointed day, produce an annual sum equal to the feuduty.
- (2) Unless the feuduty was, at extinction, a *cumulo* feuduty the sum so determined shall be the compensatory payment.
- (3) If the feuduty was, at extinction, a *cumulo* feuduty the former superior shall, after determining that sum, allocate it among the former vassals in such proportions as are reasonable in all the circumstances; and an amount which is so allocated to a former vassal shall be the compensatory payment for that former vassal.
- (4) If the feuduty was, at extinction, a *cumulo* feuduty wholly or partly apportioned among the former vassals, then for the purposes of subsection (3) above the proportions of an allocation shall be presumed reasonable in so far as they accord with that apportionment.

10 Making compensatory payment by instalments

- (1) Where notice under subsection (1) of section 8 of this Act requires from a former vassal a compensatory payment of not less than £50, the former superior shall serve with it a filled out document (in this section referred to as an (“instalment document”, in (or as nearly as may be in) the form contained in schedule 3 to this Act, for signature and dating by the former vassal (there being appended to the document so sent a copy of the explanatory note which immediately follows that form in the schedule); and if the former superior does not do so then no requirement to make the compensatory payment shall arise under subsection (5) of that section by virtue of that notice.
- (2) Subject to subsection (3) below, a former vassal on whom an instalment document is served shall obtain the option of making the compensatory payment by instalments if (and only if)—

- (a) he signs, dates and returns the document within the period which (but for this section) is allowed for making that payment by section 8(5) of this Act; and
 - (b) when so returning the document, he pays to the former superior an amount equivalent to one tenth of the compensatory payment (being an amount thus payable in addition to the compensatory payment and irrespective of how or when the compensatory payment is subsequently made).
- (3) If on or after the date on which an instalment document is served on a former vassal he ceases by virtue of a sale, or transfer for valuable consideration, to have right to the land in respect of which the feuduty was payable or any part of that land (that land or any part of it being in this section referred to as “the land” then—
- (a) where he has obtained the option mentioned in subsection (2) above, he shall lose that option; and
 - (b) where he has not obtained that option, he shall lose the right to obtain it.
- (4) Where the option of making the compensatory payment by instalments is obtained, those instalments shall be equal instalments payable where—
- (a) the compensatory payment is £500 or less, on each of the five;
 - (b) it is more than £500 but not more than £1,000, on each of the ten;
 - (c) it is more than £1,000 but not more than £1,500, on each of the fifteen; and
 - (d) it is more than £1,500, on each of the twenty,
- term days of Whitsunday or Martinmas which then next follow; except that—
- (i) in a case where any such instalment remains unpaid for forty-two days after falling due, the outstanding balance of the entire compensatory payment shall immediately fall due;
 - (ii) in a case where, by virtue of subsection (3)(a) above, the option is lost, that outstanding balance shall fall due on the seventh day after the day on which the former vassal ceases to have right to the land; and
 - (iii) in any other case, the former vassal may pay that outstanding balance at any time.
- (5) In a case where, by virtue of subsection (3)(b) above, the right to obtain the option of making the compensatory payment by instalments is lost, section 8(5) of this Act shall apply accordingly.

11 Service under section 8(1)

- (1) Due service under section 8(1) of this Act is effected by delivering the documents in question to the former vassal or by sending them by registered post, or the recorded delivery service, addressed to him at an appropriate place.
- (2) An acknowledgement, signed by the former vassal, which conforms to Form A of schedule 4 to this Act, or as the case may be a certificate which conforms to Form B of that schedule and is accompanied by the postal receipt, shall be sufficient evidence of such due service; and if the packet containing the documents in question is, under subsection (1) above, sent by post but is returned to the former superior with an intimation that it could not be delivered, the packet may be delivered or sent by post, with that intimation, to the Extractor of the Court of Session, the delivering or sending to the Extractor being taken to be equivalent to the service of those documents on the former vassal.

- (3) For the purposes of subsection (2) above, an acknowledgement of receipt by the Extractor on a copy of those documents shall be sufficient evidence of their receipt by him.
- (4) The date on which notice under section 8(1) of this Act is served on a former vassal is the date of delivery, or as the case may be of posting, in compliance with subsection (1) or (2) above.
- (5) A reference in this section to an “appropriate place” is, for any former vassal, to be construed as a reference to—
- (a) his place of residence;
 - (b) his place of business; or
 - (c) a postal address which he ordinarily uses,
- or, if none of those is known at the time of delivery or posting, as a reference to whatever place is at that time his most recently known place of residence or place of business or postal address which he ordinarily used.

12 Extinction by prescription of requirement to make compensatory payment

In Schedule 1 to the Prescription and Limitation (Scotland) Act 1973 (c. 52) (which specifies obligations affected by prescriptive periods of five years under section 6 of that Act)—

- (a) in paragraph 1, after sub-paragraph (a) there shall be inserted—
 - “(aa) to any obligation to make a compensatory payment (“compensatory payment” being construed in accordance with section 8(1) of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), including that section as read with section 56 of that Act);”;
- (b) in paragraph 2(e), after the words “paragraph 1(a)” there shall be inserted “or (aa)”.

Arrears

13 Arrears of feuduty etc

- (1) Feuduty shall continue to be exigible for any period before the appointed day; and if (in so far as so exigible) it has not fallen due before that day, it shall fall due on that day.
- (2) On the appointed day feuduty shall cease to constitute a *debitum fundi* as shall any amount secured, in favour of a superior, by virtue of section 5 of the Land Tenure Reform (Scotland) Act 1974 (c. 38) (redemption on transfer of land).
- (3) The superior’s hypothec is, on the appointed day, abolished.
- (4) Subsections (2) and (3) above are without prejudice to any—
 - (a) action—
 - (i) founded on a *debitum fundi* or superior’s hypothec; and
 - (ii) commenced before the appointed day; or
 - (b) right or preference—
 - (i) so founded; and

- (ii) claimed in a sequestration, or in some other process in which there is ranking, commenced before that day.

Disclosure

14 Duty of collecting third party to disclose information

For the purposes of section 8(1) of this Act, a superior (or, on or after the appointed day, a former superior) who receives, or has at any time received, from a third party an amount collected in respect of feuduty from and remitted to the superior (or former superior) on behalf of a vassal (or, on or after the appointed day, a former vassal) may require the third party to disclose the identity and address of the vassal (or former vassal) and, in the case of remission as a part of a feuduty, the amount so collected from the vassal (or former vassal); and the third party shall, in so far as it is practicable for him to do so, forthwith comply with that requirement.

15 Duty to disclose identity etc. of former vassal

Where the former superior purports duly to serve notice under section 8(1) of this Act but the person on whom it is served, being a person who had right to the feu before the appointed day, is not the former vassal because, immediately before the appointed day, some other person and not he had right to the feu, he shall forthwith disclose to the former superior—

- (a) the identity and address of that other person; or
- (b) (if he cannot do that) such other information as he has which might enable the former superior to discover that identity and address.

Interpretation

16 Interpretation of Part 3

- (1) In this Part of this Act, unless the context otherwise requires—
 - “compensatory payment” shall be construed in accordance with section 8(1) of this Act;
 - “feuduty” includes blench duty;
 - “superior”, in relation to a feu, means the person who, immediately before the appointed day, has right to the immediate superiority, whether or not he has completed title (and if more than one person comes within that description, then the person who has most recently acquired such right); and “former superior” shall be construed in accordance with section 8(1) of this Act; and
 - “vassal”, in relation to a feu, means the person who, immediately before the appointed day, has right to the feu, whether or not he has completed title (and if more than one person comes within that description, then the person who has most recently acquired such right); and “former vassal” shall be construed in accordance with section 8(1) of this Act.
- (2) Where a feu comprises parts each held by a separate vassal, being parts upon which feuduty has not been allocated, the whole of any feuduty exigible in respect of the parts so held is in this Part of this Act referred to as a “*cumulo* feuduty”; and any

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reference in this Part of this Act to a feu is to be construed, in relation to the parts so held, as a reference to those parts collectively.

- (3) Any reference in this Part of this Act to a feu is to be construed as including a reference to any part of a feu if it is a part upon which feuduty has been allocated.
- (4) Where, immediately before the appointed day a feu, or any part of a feu, is held by two or more vassals as common property—
 - (a) they shall be severally liable to make any compensatory payment (but as between, or as the case may be among, themselves they shall be liable in the proportions in which they hold the feu); and
 - (b) subject to section 11 of this Act they shall together be treated for the purposes of this Act as being a single vassal.

PART 4

REAL BURDENS

Extinction of superior's rights

17 Extinction of superior's rights

- (1) Subject to sections 18, 19, 20, 23, 27, 28 and 60 of this Act—
 - (a) a real burden which, immediately before the appointed day, is enforceable by, and only by, a superior shall on that day be extinguished; and
 - (b) any other real burden shall, on and after that day, not be enforceable by a former superior.
- (2) Subject to subsection (3) below and to the provision made by section 20 of this Act for there to be a transitional period during which a real burden shall yet be enforceable—
 - (a) on or after the appointed day, no proceedings for such enforcement shall be commenced;
 - (b) any proceedings already commenced for such enforcement shall be deemed to have been abandoned on that day and may, without further process and without any requirement that full judicial expenses shall have been paid by the pursuer, be dismissed accordingly; and
 - (c) any decree or interlocutor already pronounced in proceedings for such enforcement shall be deemed to have been reduced, or as the case may be recalled, on that day.
- (3) Subsection (2) above shall not affect any proceedings, decree or interlocutor in relation to—
 - (a) a right of irritancy held by a superior; or
 - (b) a right to recover damages or to the payment of money.

Reallotment etc.

18 Reallotment of real burden by nomination of new dominant tenement

- (1) Where—

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- (a) a feudal estate of *dominium utile* of land is subject to a real burden 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*; and
 - (b) at least one of the conditions set out in subsection (7) below is met, the superior may, before the appointed day, prospectively nominate other land (being land of which he has right to the sole *dominium utile* or sole allodial ownership), or any part of that other land, as a dominant tenement by duly executing and registering a notice in, or as nearly as may be in, the form contained in schedule 5 to this Act.
- (2) The notice shall—
- (a) set out the title of the superior;
 - (b) describe, sufficiently to enable identification by reference to the Ordnance Map, both the land the *dominium utile* of which is subject to the real burden (or any part of that land) and the land (or part) nominated;
 - (c) specify which of the conditions set out in subsection (7) below is (or are) met;
 - (d) set out the terms of the real burden; and
 - (e) set out the terms of any counter-obligation to the real burden if it is a counter— obligation enforceable against the superior.
- (3) For the purposes of subsection (1) above a notice is duly registered only when registered against both tenements described in pursuance of subsection (2)(b) above.
- (4) Before submitting any notice for registration under this section, the superior shall swear or affirm before a notary public that to the best of the knowledge and belief of the superior all the information contained in the notice is true.
- (5) For the purposes of subsection (4) above, if the superior is—
- (a) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in that subsection, then a legal representative of the superior may swear or affirm;
 - (b) not an individual, then any person authorised to sign documents on its behalf may swear or affirm;
- and any reference in that subsection to a superior shall be construed accordingly.
- (6) If subsections (1) to (5) above are complied with and immediately before the appointed day the real burden is still enforceable by the superior (or by 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—
- (a) the land (or part) nominated shall become a dominant tenement; and
 - (b) the land the *dominium utile* of which was subject to the real burden (or if part only of that land is described in pursuance of subsection (2)(b) above, that part) shall be the servient tenement.
- (7) The conditions are—
- (a) that the land which by virtue of this section would become the dominant tenement has on it a permanent building which is in use wholly or mainly as a place of human—
 - (i) habitation; or
 - (ii) resort,and that building is, at some point, within one hundred metres (measuring along a horizontal plane) of the land which would be the servient tenement;

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- (b) that the real burden comprises—
 - (i) a right to enter, or otherwise make use of, the servient tenement; or
 - (ii) a right of pre-emption or of redemption; or
- (c) that the land which by virtue of this section would become the dominant tenement comprises—
 - (i) minerals; or
 - (ii) salmon fishings or some other incorporeal property,
 and it is apparent from the terms of the real burden that it was created for the benefit of such land.

(8) This section is subject to sections 41 and 42 of this Act.

19 Reallocation of real burden by agreement

- (1) Where a feudal estate of *dominium utile* of land is subject to a real burden 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—
- (a) serve notice in, or as nearly as may be in, the form contained in schedule 6 to this Act, on the person who has right to the feu that he seeks to enter into an agreement with that person under this section prospectively nominating other land (being land of which the superior has right to the sole *dominium utile* or sole allodial ownership), or any part of that other land, as a dominant tenement;
 - (b) enter into such an agreement with that person; and
 - (c) duly register that agreement;
- but if they think fit they may, by the agreement, modify the real burden or any counter— obligation to the real burden if it is a counter-obligation enforceable against the superior (or both the real burden and any such counter-obligation).
- (2) The notice shall—
- (a) set out the title of the superior;
 - (b) describe both the land the *dominium utile* of which is subject to the real burden (or any part of that land) and the land (or part) nominated;
 - (c) set out the terms of the real burden; and
 - (d) set out the terms of any such counter-obligation as is mentioned in subsection (1) above.
- (3) An agreement such as is mentioned in paragraph (b) of subsection (1) above shall be a written agreement—
- (a) which expressly states that it is made under this section; and
 - (b) which includes all the information, other than that relating to service, required to be set out in completing the notice the form of which is contained in schedule 6 to this Act.
- (4) For the purposes of subsection (1)(c) above an agreement is duly registered only when registered against both tenements described in pursuance of subsection (2)(b) above.
- (5) If subsections (1)(b) and (c), (3) and (4) above are complied with and immediately before the appointed day the real burden is still enforceable by the superior (or by 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—

- (a) the land (or part) nominated shall become a dominant tenement; and
 - (b) the land the *dominium utile* of which was subject to the real burden (or if part only of that land is described in pursuance of subsection (2)(b) above, that part) shall be the servient tenement.
- (6) A person may enter into an agreement under this section even if he has not completed title to the *dominium utile* of the land subject to the real burden, or as the case may be title to the *dominium directum* of that land or to the *dominium utile* of the land nominated (or, if the land nominated is allodial land, to the land nominated), provided that, in any case to which section 15(3) of the Land Registration (Scotland) Act 1979 (c. 33) (simplification of deeds relating to registered interests) does not apply, he deduces title, in the agreement, from the person who appears in the Register of Sasines as having the last recorded title to the interest in question.
- (7) This section is subject to section 42 of this Act.

20 Reallocation of real burden by order of Lands Tribunal

- (1) Where but for paragraph (b) of subsection (1) of section 18 of this Act a superior could proceed under that subsection prospectively to nominate land (in this section referred to as the (“prospective dominant tenement” he may, provided that he has first, in pursuance of section 19 of this Act, attempted to reach agreement as respects the real burden in question with the person who has right to the feu, apply to the Lands Tribunal for an order under subsection (7) of this section; but such an application is competent only if made within such period as the Scottish Ministers may prescribe by order (being a period which ends before the appointed day).
- (2) An applicant under subsection (1) above shall include in his application a description of the requisite attempt to reach agreement.
- (3) After sending or delivering to the Lands Tribunal an application under subsection (1) above, the superior may, within—
- (a) 42 days; or
 - (b) such longer period of days (being a period which ends before the appointed day) as the Lands Tribunal may allow if it is satisfied that there is good cause for so allowing,
- duly execute and register a notice in, or as nearly as may be in, the form contained in schedule 7 to this Act; and section 17(1) of this Act shall have no effect as regards a real burden in respect of which such notice has been so executed and registered.
- (4) The notice shall—
- (a) set out the title of the superior;
 - (b) describe, sufficiently to enable identification by reference to the Ordnance Map, both the land the *dominium utile* of which is subject to the real burden (or any part of that land) and the prospective dominant tenement;
 - (c) set out the terms of the real burden; and
 - (d) set out the terms of any counter-obligation to the real burden if it is a counter — obligation enforceable against the superior.
- (5) For the purposes of this section, a notice is duly registered only when registered against both tenements described in pursuance of subsection (4)(b) above; and if it is so registered and immediately before the appointed day—

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- (a) the real burden is still enforceable by the superior (or by his successor) or would be so enforceable, or still so enforceable, were the person in question to complete title to the *dominium directum*; and
- (b) no order under subsection (7) below has been registered under subsection (11) below in respect of the application,

then on that day the prospective dominant tenement shall, for the transitional period, become the dominant tenement and the land the *dominium utile* of which is subject to the real burden (or, if part only of that land is described under paragraph (b) of subsection (4) above, that part) shall, for the transitional period, be the servient tenement.

(6) The reference in subsection (5) above to the transitional period is to the period beginning on the appointed day and ending on—

- (a) the day on which an order under subsection (7) below is registered under subsection (11) below in respect of the application; or
- (b) if no such order is so registered, such day later than the appointed day as the Scottish Ministers may by order specify (that later day being in this Act referred to as the “specified day”).

(7) If, on an application under subsection (1) above as respects which a notice has been duly registered—

- (a) the Lands Tribunal is satisfied that, were the real burden to be extinguished, there would be substantial loss or disadvantage to the applicant as owner (taking him to be such) of the dominant tenement, the Tribunal may order that, subject to subsection (9) of this section—

- (i) if the order can be and is registered before the appointed day, then on that day the prospective dominant tenement shall become the dominant tenement and the land the *dominium utile* of which is subject to the real burden (or, if part only of that land is described under paragraph (b) of subsection (4) above, that part) shall be the servient tenement; or

- (ii) the dominant tenement for the transitional period shall, after that period, continue to be the dominant tenement and the servient tenement for the transitional period shall, after that period, continue to be the servient tenement; or

- (b) the Lands Tribunal is not so satisfied, it may order that the real burden shall be extinguished or shall cease to be enforceable by the superior or former superior as the case may be.

(8) Where in respect of the application—

- (a) an order under paragraph (a) of subsection (7) above is registered—
 - (i) before the appointed day and immediately before that day the real burden is still enforceable by the superior (or by 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; or
 - (ii) on or after the appointed day and immediately before the day of registration the real burden is still enforceable by the former superior (or by his successor) or would be so enforceable, or still so enforceable, as mentioned in sub-paragraph (i) above, then on the day of registration,

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- the prospective dominant tenement shall become the dominant tenement and the land the *dominium utile* of which was subject to the real burden (or, if part only of that land is described under paragraph (b) of subsection (4) above, that part) shall be the servient tenement;
- (b) an order under paragraph (b) of subsection (7) above is registered—
- (i) before the appointed day, the real burden shall, if immediately before that day it is enforceable by, and only by, the superior or his successor or would be so enforceable were the person in question to complete title to the *dominium directum*, on that day be extinguished and if it is otherwise enforceable then on and after that day it shall not be enforceable by the former superior or his successor; or
 - (ii) on or after the appointed day, the real burden shall, if immediately before the day of registration it is enforceable by, and only by, the former superior or his successor or would be so enforceable as mentioned in sub-paragraph (i) above, on the day of registration be extinguished and if it is otherwise enforceable then on and after the day of registration it shall not be enforceable by the former superior or his successor; or
- (c) the specified day occurs and no order under subsection (7) above has yet been made and registered, the real burden shall, if immediately before the specified day it is enforceable by, and only by, the former superior or his successor or would be so enforceable as mentioned in sub-paragraph (i) of paragraph (b) above, on that day be extinguished and if it is otherwise enforceable then on and after that day it shall not be enforceable by the former superior or his successor.
- (9) An order under subsection (7)(a) above may modify the real burden or any counter — obligation to the real burden if it is a counter-obligation enforceable against the applicant (or both the real burden and any such counter-obligation).
- (10) The decision of the Lands Tribunal on an application under subsection (1) above shall be final.
- (11) An order under subsection (7) above shall forthwith be extracted and registered by the Lands Tribunal against both tenements described in pursuance of subsection (4) (b) above; and the expenses of registration shall be borne by the applicant.
- (12) Subsections (2) and (3) of section 17 of this Act shall apply in relation to real burdens extinguished or rendered unenforceable by virtue of this section as they apply in relation to real burdens extinguished or so rendered by subsection (1) of that section with the substitution, if the extinction or rendering is after the appointed day, for each reference in them to that day, of a reference to the day which ends the transitional period.
- (13) A person opposing an application made under subsection (1) above incurs no liability, unless in the opinion of the Lands Tribunal his actings are vexatious or frivolous, in respect of expenses incurred by the applicant.
- (14) This section is subject to sections 41 and 42 of this Act.
- (15) Before submitting any notice for registration under this section, the superior shall swear or affirm before a notary public that to the best of the knowledge and belief of the superior all the information contained in the notice is true.

- (16) For the purposes of subsection (15) above, if the superior is—
- (a) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in that subsection, then a legal representative of the superior may swear or affirm;
 - (b) not an individual, then any person authorised to sign documents on its behalf may swear or affirm;
- and the references in that subsection to the superior shall be construed accordingly.

21 Manner of dealing with application under section 20

- (1) On receiving an application under section 20 of this Act the Lands Tribunal shall give such notice of that application, whether by way of advertisement or otherwise, as may be prescribed for the purposes of that section by the Scottish Ministers by rules under section 3 of the Lands Tribunal Act 1949 (c. 42) to any person who has right to the feu which is subject to the real burden in question and, if the Lands Tribunal thinks fit, to any other person.
- (2) Any person who, whether or not he has received notice under subsection (1) above, has right to the feu which is subject to the real burden in question (or as the case may be has right to the servient tenement) or is affected by that real burden or by its proposed reallotment shall be entitled, within such time as may be so prescribed, to oppose or make representations in relation to the application; and the Lands Tribunal shall allow any such person, and may allow any other person who appears to it to be affected by that real burden or by its proposed reallotment, to be heard in relation to the application.
- (3) Without prejudice to subsections (1) and (2) above, the Scottish Ministers may, in rules under the said section 3, make special provision in relation to any matter pertaining to proceedings in applications under section 20 of this Act (or in any class of such applications).

22 Amendment of Tribunals and Inquiries Act 1992

In section 11 (proceedings in relation to which there is no appeal from the decision of the Lands Tribunal) of the Tribunals and Inquiries Act 1992 (c. 53), in subsection (2)—

- (a) the words after “in relation to” shall be paragraph (a); and
- (b) after that paragraph there shall be inserted “; or
proceedings under section 20 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5) (reallotment of real burden)”.

23 Reallotment of real burden affecting facility of benefit to other land etc

- (1) Subject to subsection (3) below, where, immediately before the appointed day, a real burden enforceable by a superior regulates the maintenance, management, reinstatement or use of heritable property which constitutes, and is intended to constitute, a facility of benefit to other land (examples of property which might constitute such a facility being, without prejudice to the generality of this subsection, set out in subsection (4) below) then—
 - (a) the land benefited;
 - (b) the heritable property which constitutes the facility,

shall, if on the appointed day it is not a dominant tenement, become a dominant tenement on that day (the servient tenement being the land the *dominium utile* of which was subject to the real burden immediately before that day).

- (2) Where, immediately before the appointed day, a real burden enforceable by a superior regulates the provision of services to land other than land the *dominium utile* of which is subject to the real burden, then the land to which the services are provided shall, if on the appointed day it is not a dominant tenement, become a dominant tenement on that day (the servient tenement being as mentioned in subsection (1) above).
- (3) Subsection (1) above does not apply to a real burden in so far as that burden constitutes an obligation to maintain or reinstate which has been assumed—
 - (a) by a local or other public authority; or
 - (b) by, under or by virtue of any enactment, by a successor body to any such authority.
- (4) The examples referred to in subsection (1) above are—
 - (a) a common part of a tenement building;
 - (b) a common area for recreation;
 - (c) a private road;
 - (d) private sewerage;
 - (e) a boundary wall.

24 Interest to enforce real burden

Sections 18 to 20 and 23 of this Act are without prejudice to any requirement that a dominant proprietor have an interest to enforce a real burden (and such interest shall not be presumed).

25 Counter-obligations on reallocation

Where a real burden is reallocated under section 18, 19, 20 or 23 of this Act, the right to enforce the burden shall be subject to any counter-obligation (modified as the case may be by the agreement or by the order of the Lands Tribunal) enforceable against the superior immediately before (as the case may be) the nominated land, the prospective dominant tenement, the land benefited, the heritable property or the land to which services are provided becomes the dominant tenement.

Conservation burdens

26 Conservation bodies

- (1) For the purposes of this Part of this Act, the Scottish Ministers may, subject to subsection (2) below, by regulations, prescribe such body (if any) as they think fit to be a conservation body.
- (2) The power conferred by subsection (1) above may be exercised in relation to a body only if the object, or function, of the body (or, as the case may be, one of its objects or functions) is to preserve, or protect, for the benefit of the public—
 - (a) the architectural or historical characteristics of any land; or

- (b) any other special characteristics of any land (including, without prejudice to the generality of this paragraph, a special characteristic derived from the flora, fauna or general appearance of any land).
- (3) Where the power conferred by subsection (1) above is exercised in relation to a trust, the conservation body shall be the trustees of the trust.
- (4) The Scottish Ministers may, by regulations, prescribe that such conservation body as may be specified in the regulations shall cease to be a conservation body.

27 Notice preserving right to enforce conservation burden

- (1) Where a conservation body has, or the Scottish Ministers have, the right as superior to enforce a real burden of the class described in subsection (2) below or would have that right were it or they to complete title to the *dominium directum*, it or they may, before the appointed day, preserve for the benefit of the public the right to enforce the burden in question after that day by executing and registering against the *dominium utile* of the land subject to the burden a notice in, or as nearly as may be in, the form contained in schedule 8 to this Act; and any burden as respects which such a right is so preserved shall, on and after the appointed day, be known as a “conservation burden”.
- (2) The class is those real burdens which are enforceable against a feudal estate of *dominium utile* of land for the purpose of preserving, or protecting—
 - (a) the architectural or historical characteristics of the land; or
 - (b) any other special characteristics of the land (including, without prejudice to the generality of this paragraph, a special characteristic derived from the flora, fauna or general appearance of the land).
- (3) The notice shall—
 - (a) state that the superior is a conservation body by virtue of section 26 of this Act or that the superior is the Scottish Ministers;
 - (b) set out the title of the superior;
 - (c) describe, sufficiently to enable identification by reference to the Ordnance Map, the land subject to the real burden (or any part of that land);
 - (d) set out the terms of the real burden; and
 - (e) set out the terms of any counter-obligation to the real burden if it is a counter-obligation enforceable against the superior.
- (4) This section is subject to sections 41 and 42 of this Act.

28 Enforcement of conservation burden

- (1) Subject to section 31 of this Act, if a notice has been executed and registered in accordance with section 27 of this Act and, immediately before the appointed day, the burden to which the notice relates is still enforceable by the conservation body or the Scottish Ministers as superior or would be so enforceable, or still so enforceable, were the body in question or they to complete title to the *dominium directum* then, on and after the appointed day, the conservation body or as the case may be the Scottish Ministers shall—
 - (a) subject to any counter-obligation, have title to enforce the burden against the land to which the notice in question relates; and
 - (b) be presumed to have an interest to enforce that burden.

- (2) The references in subsection (1) above to—
- (a) the conservation body include references to—
 - (i) any conservation body which is; or
 - (ii) the Scottish Ministers where they are, its successor as superior;
 - (b) the Scottish Ministers include references to a conservation body which is their successor as superior.

29 Assignment of right to conservation burden

The right to a conservation burden may be assigned or otherwise transferred to any conservation body or to the Scottish Ministers; and any such assignation or transfer shall take effect on registration.

30 Deduction of title for conservation burden

Where a conservation body does not, or the Scottish Ministers do not, have a completed title to a conservation burden, the body, or as the case may be the Ministers, may—

- (a) in any assignation, or transfer, under section 29 of this Act, deduce title to the conservation burden through the midcouples linking it or them to the conservation body having the last completed title; or
- (b) complete title to the burden by registering a notice of title.

31 Extinction of burden on body ceasing to be conservation body

If, immediately before ceasing to be a conservation body (whether because regulations under section 26(4) of this Act so provide or because the body has ceased to exist), a body was entitled to enforce a conservation burden, then, on the body so ceasing, that burden shall forthwith be extinguished.

32 No standard security over conservation burden

In section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) (the standard security), after subsection (2) insert—

“(2A) It shall not be competent to grant a standard security over a conservation burden (within the meaning of Part 4 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)).”.

Compensation

33 Notice reserving right to claim compensation where land subject to development value burden

- (1) Where—
- (a) before the appointed day, land was feued subject to a real burden enforceable by a superior (or so enforceable if the person in question were to complete title to the *dominium directum*) which reserved for the superior the benefit (whether wholly or in part) of any development value of the land (such a real

Status: This is the original version (as it was originally enacted).

burden being referred to in this Part of this Act as a (“development value burden”); and

- (b) either—
- (i) the consideration paid, or payable, under the grant in feu was significantly lower than it would have been had the feu not been subject to the real burden; or
 - (ii) no consideration was paid, or payable, under the grant in feu,
- the superior may, before that day, reserve the right to claim (in accordance with section 35 of this Act) compensation by executing and registering against the *dominium utile* of the land subject to the burden a notice in, or as nearly as may be in, the form contained in schedule 9 to this Act.

- (2) A notice under this section 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 development value burden;
 - (c) set out the terms of the burden;
 - (d) state that the burden reserves development value and set out any information relevant to that statement;
 - (e) set out, to the best of the superior’s knowledge and belief, the amount by which the consideration was reduced because of the imposition of the burden; and
 - (f) the superior reserves the right to claim compensation in accordance with section 35 of this Act.
- (3) Before submitting any notice for registration under this section, the superior shall swear or affirm before a notary public that to the best of the knowledge and belief of the superior all the information contained in the notice is true.
- (4) For the purposes of subsection (3) above, if the superior is—
- (a) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in that subsection, then a legal representative of the superior may swear or affirm;
 - (b) not an individual, then any person authorised to sign documents on its behalf may swear or affirm;
- and any reference in that subsection to a superior shall be construed accordingly.
- (5) In this Part of this Act, “development value” (except in the expression “development value burden”) means any significant increase in the value of the land arising as a result of the land becoming free to be used, or dealt with, in some way not permitted under the grant in feu.
- (6) This section is subject to sections 41 and 42 of this Act.

34 **Transmissibility of right to claim compensation[j074.doc]**

A right to claim compensation reserved in accordance with section 33 of this Act is transmissible.

35 Claiming compensation

- (1) Where the conditions mentioned in subsection (2) below are satisfied, any person who has, by or by virtue of a notice executed and registered in accordance with section 33 of this Act, a reserved right to claim compensation shall be entitled, subject to any order under section 44(2) of this Act, to compensation from the person who is the owner.
- (2) The conditions are that—
 - (a) the real burden set out in the notice was, immediately before the appointed day, enforceable by the superior or would have been so enforceable immediately before that day had the person in question completed title to the *dominium directum*;
 - (b) on that day the burden, or as the case may be any right (or right on completion of title) of the superior to enforce the burden, was extinguished, or rendered unenforceable, by section 17(1) of this Act; and
 - (c) at any time—
 - (i) during the period of five years ending immediately before the appointed day, there was a breach of the burden; or
 - (ii) during the period of twenty years beginning with the appointed day, there was an occurrence, which, but for the burden becoming extinct, or unenforceable, as mentioned in paragraph (b) above, would have been a breach of the burden.
- (3) Where a person is entitled, by virtue of subsection (1) above, to compensation, he shall make any claim for such compensation by notice in writing duly served on the owner; and any such notice shall specify, in accordance with section 37 of this Act, the amount of compensation claimed.
- (4) Where, in relation to a claim made under subsection (3) above, the condition mentioned in—
 - (a) sub-paragraph (i) of subsection (2)(c) above applies, any such claim may not be made more than three years after the appointed day;
 - (b) sub-paragraph (ii) of subsection (2)(c) above applies, any such claim may not be made more than three years after the date of the occurrence.
- (5) For the purposes of this section, if a breach, or occurrence, such as is mentioned in subsection (2)(c) above is continuing, the breach or, as the case may be, occurrence shall be taken to occur when it first happens.
- (6) The reference in subsection (3) above to a notice being duly served shall be construed in accordance with section 36 of this Act.

36 Service under section 35(3)

- (1) Due service under section 35(3) of this Act is effected by delivering the notice in question to the owner or by sending it by registered post, or the recorded delivery service, addressed to him at an appropriate place.
- (2) An acknowledgement, signed by the owner, which conforms to Form A of schedule 10 to this Act, or as the case may be a certificate which conforms to Form B of that schedule and is accompanied by the postal receipt, shall be sufficient evidence of such due service; and if the notice in question is, under subsection (1) above, sent by post but is returned to the person who is entitled to compensation with an intimation that it could not be delivered, the notice may be delivered or sent by post, with that intimation,

to the Extractor of the Court of Session, the delivery or sending to the Extractor being taken to be equivalent to the service of that notice on the owner.

- (3) For the purposes of subsection (2) above, an acknowledgement of receipt by the Extractor on a copy of that notice shall be sufficient evidence of its receipt by him.
- (4) The date on which notice under section 35(3) of this Act is served on an owner is the date of delivery, or as the case may be of posting, in compliance with subsection (1) or (2) above.
- (5) A reference in this section to an “appropriate place” is, for any owner, to be construed as a reference to—
 - (a) his place of residence;
 - (b) his place of business; or
 - (c) a postal address which he ordinarily uses,
 or, if none of those is known at the time of delivery or posting, as a reference to whatever place is at that time his most recently known place of residence or place of business or postal address which he ordinarily used.

37 Amount of compensation

- (1) The amount of any compensation payable on a claim made under section 35(3) of this Act shall, subject to subsections (2) and (3) below, be such sum as represents, at the time of the breach or occurrence in question, any development value which would have accrued to the owner had the burden been modified to the extent necessary to permit the land to be used, or dealt with, in the way that constituted the breach or, as the case may be, occurrence on which the claim is based.
- (2) The amount payable as compensation (or, where more than one claim is made in relation to the same development value burden, the total compensation payable) under subsection (1) above shall not exceed such sum as will make up for any effect which the burden produced, at the time when it was imposed, in reducing the consideration then paid or made payable for the feu.
- (3) In assessing for the purposes of subsection (1) above an amount of compensation payable—
 - (a) any entitlement of the claimant to recover any part of the development value of the land subject to the development value burden shall be taken into account; and
 - (b) a claimant to whom the reserved right was assigned or otherwise transferred shall be entitled to no greater sum than the former superior would have been had there been no such assignation or transfer.
- (4) The reference in subsection (1) above to a burden shall, in relation to an occurrence, be construed as a reference to the burden which would have been breached but for its becoming, by section 17(1) of this Act, extinct or unenforceable.

38 Duty to disclose identity of owner

Where a person (“the claimant”) purports duly to serve notice under section 35(3) of this Act and the person on whom it is served, being a person who had right, before the time of the breach (or, as the case may be, occurrence) founded on by the claimant, to

the dominium utile (or the ownership) of the land, is not the owner, that person shall forthwith disclose to the claimant—

- (a) the identity and address of the owner; or
- (b) (if he cannot do that) such other information as he has that might enable the claimant to discover the identity and address;

and the notice shall refer to that requirement for disclosure.

39 The expression “owner” for purposes of sections 35 to 38

- (1) In sections 35 to 38 of this Act, “owner” means the person who, at the time of the breach or, as the case may be, occurrence, mentioned in section 35(2)(c) of this Act, has right to—

- (a) the dominium utile; or
- (b) the ownership,

of the land which, immediately before the appointed day, was subject to the development value burden, whether or not he has completed title; and if more than one person comes within that description, then the owner is the person who has most recently acquired such right.

- (2) Where the land in question is held by two or more such owners as common property, they shall be severally liable to make any compensatory payment (but as between, or as the case may be among, themselves they shall be liable in the proportions in which they hold the land).

40 Assignment, discharge, or restriction, of reserved right to claim compensation

A reserved right to claim, in accordance with section 35 of this Act, compensation may be—

- (a) assigned, whether wholly or to such extent (expressed as a percentage of each claim which may come to be made) as may be specified in the assignment; or
- (b) discharged or restricted,

by execution and registration of an assignment, or as the case may be a discharge, or restriction, in the form, or as nearly as may be in the form, contained in schedule 11 to this Act.

Miscellaneous

41 Notices: pre-registration requirements etc

- (1) This section applies in relation to any notice which is to be submitted for registration under this Act.
- (2) It shall not be necessary to endorse on the notice a warrant of registration.
- (3) Except where it is not reasonably practicable to do so, a superior shall, before he executes the notice, send by post to the person who has the estate of *dominium utile* of the land to which the burden relates (addressed to “The Proprietor” where the name of that person is not known) a copy of—
- (a) the notice; and
 - (b) the explanatory note set out in whichever schedule to this Act relates to the notice.

- (4) A superior shall, in the notice, state either—
- (a) that a copy of the notice has been sent in accordance with subsection (3) above; or
 - (b) that it was not reasonably practicable for such a copy to be sent.

42 Further provision as respects sections 18 to 20, 27 and 33

- (1) Where—
- (a) a notice relating to a real burden has been registered under section 18, 20, 27 or 33 of this Act; or
 - (b) an agreement relating to a real burden has been registered under section 19 of this Act,
- against the *dominium utile* of any land which is subject to the burden, it shall not be competent to register under any of those sections against that *dominium utile* another such notice or agreement relating to the same real burden; but nothing in this subsection shall prevent registration where—
- (i) the discharge of any earlier such notice has been registered by the person who registered that notice (or by his successor); or
 - (ii) as the case may be, the discharge of any earlier such agreement has been registered, jointly, by the parties to that agreement (or by their successors).
- (2) Where the *dominium utile* of any land comprises parts each held by a separate vassal, each part shall be taken to be a separate feudal estate of *dominium utile*.
- (3) Where more than one feudal estate of *dominium utile* is subject to the same real burden enforceable by a superior of the feu, he shall, if he wishes to execute and register a notice under section 18, 20, 27 or 33 of this Act against those feudal estates in respect of that real burden, require to do so against each separately.
- (4) Where a feudal estate of *dominium utile* is subject to more than one real burden enforceable by a superior of the feu, he may if he wishes to—
- (a) execute and register a notice under section 18, 20, 27 or 33 of this Act against that feudal estate in respect of those real burdens, do so by a single notice; or
 - (b) enter into and register an agreement under section 19 of this Act against that feudal estate in respect of those real burdens, do so by a single agreement.

43 Notices and agreements under certain sections: extent of Keeper's duty

- (1) In relation to any notice submitted for registration under section 18, 20, 27 or 33 of this Act, the Keeper of the Registers of Scotland shall not be required to determine whether the superior has complied with the terms of section 41(3) of this Act.
- (2) In relation to any notice, or as the case may be any agreement, submitted for registration under—
- (a) section 18, 19, 20, 27 or 33 of this Act, the Keeper shall not be required to determine whether, for the purposes of subsection (1) of the section in question, a real burden is enforceable by a superior;
 - (b) section 18 of this Act, the Keeper shall not be required to determine, where, in pursuance of subsection (2)(c) of that section, the condition specified is that mentioned in subsection (7)(a) of that section, whether the terms of that condition are satisfied;

- (c) paragraph (c) of subsection (1) of section 19 of this Act, the Keeper shall not be required to determine whether the requirements of paragraph (a) of that subsection are satisfied;
 - (d) section 20 of this Act, the Keeper shall not be required to determine—
 - (i) whether the description provided in pursuance of subsection (2) of that section is correct;
 - (ii) whether the notice has been executed, and is being registered, timeously; or
 - (iii) any matter as to which the Lands Tribunal must be satisfied before making an order under that section;
 - (e) section 33 of this Act, the Keeper shall not be required to determine whether—
 - (i) the requirements of subsection (1)(a) and (b) of that section are satisfied; or
 - (ii) the statements made or information provided, in pursuance of subsection (2)(d) or (e) of that section, are correct.
- (3) The Keeper shall not be required to determine—
- (a) for the purposes of section 18(6), 19(5), 20(5) or (8)(a)(i), 28 or 60(1) of this Act, whether immediately before the appointed day a real burden is, or is still, enforceable, or by whom; or
 - (b) for the purposes of subsection (8)(a)(ii) of section 20 of this Act, whether immediately before the day of registration of an order of the Lands Tribunal under subsection (7) of that section a real burden is, or is still, enforceable, or by whom.

44 Referral to Lands Tribunal of notice dispute

- (1) Any dispute arising in relation to a notice registered under this Act may be referred to the Lands Tribunal; and, in determining the dispute, the Tribunal may make such order as it thinks fit discharging or, to such extent as may be specified in the order, restricting the notice in question.
- (2) Any dispute arising in relation to a claim made under section 35(3) of this Act may be referred to the Lands Tribunal; and, in determining the dispute, the Tribunal may make such order as it thinks fit (including an order fixing the amount of any compensation payable under the claim in question).
- (3) In any referral under subsection (1) or (2) above, the burden of proving any disputed question of fact shall be on the person relying on the notice or, as the case may be, making the claim.
- (4) An extract of any order made under subsection (1) or (2) above may be registered and the order shall take effect as respects third parties on such registration.

45 Circumstances where certain notices may be registered after appointed day

- (1) Subject to subsection (2) below, where—
 - (a) a notice submitted, before the appointed day, for registration under this Act, or an agreement so submitted for registration under section 19 of this Act, is rejected by the Keeper of the Registers of Scotland; but
 - (b) a court or the Lands Tribunal then determines that the notice or agreement is registrable,

the notice or agreement may, if not registered before the appointed day, be registered—

- (i) within two months after the determination is made; but
- (ii) before such date after the appointed day as the Scottish Ministers may by order prescribe,

and any notice or agreement registered under this subsection on or after the appointed day shall be treated as if it had been registered before that day.

- (2) For the purposes of subsection (1) above, the application to the court, or to the Lands Tribunal, which has resulted in the determination shall require to have been made within such period as the Scottish Ministers may by order prescribe.
- (3) In subsection (1)(b) above, “court” means any court having jurisdiction in questions of heritable right or title.

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

- (1) The Keeper of the Registers of Scotland shall not be required to remove from the Land Register of Scotland a real burden extinguished by section 17(1)(a) or 20(8)(b) or (c) of this Act unless—

- (a) subject to subsection (3) below, he is requested to do so in an application for registration or rectification; or
- (b) he is, under section 9(1) of the Land Registration (Scotland) Act 1979 (c. 33) (rectification of the register), ordered, subject to subsection (3) below, to do so by the court or the Lands Tribunal;

and no such request or order shall be competent during a period which commences with the appointed day and is of such number of years as the Scottish Ministers may by order prescribe.

- (2) During the period mentioned in subsection (1) above a real burden, notwithstanding that it has been so extinguished, may at the discretion of the Keeper, for the purposes of section 6(1)(e) of that Act of 1979 (entering enforceable real right in title sheet), be taken to subsist; but this subsection is without prejudice to subsection (3) below.
- (3) The Keeper shall not, before the date mentioned in subsection (4) below, remove from the Land Register of Scotland a real burden which is the subject of a notice or agreement in respect of which application had been made for a determination by—
 - (a) a court; or
 - (b) the Lands Tribunal,
 under section 45(1)(b) of this Act.
- (4) The date is whichever is the earlier of—
 - (a) that two months after the final decision on the application; and
 - (b) that prescribed under section 45(1)(ii) of this Act.

47 Extinction of counter-obligation

Without prejudice to any other way in which a counter-obligation to a real burden may be extinguished, any such counter-obligation is extinguished on the extinction of the real burden.

48 No implication as to dominant tenement where real burden created in grant in feu

Where a real burden is created (or has at any time been created) in a grant in feu, the superior having the *dominium utile*, or allodial ownership, of land (the “superior’s land” in the vicinity of the land feued, no implication shall thereby arise that the superior’s land is a dominant tenement.

Interpretation

49 Interpretation of Part 4

In this Part of this Act, unless the context otherwise requires—

“conservation body” means a body prescribed under section 26(1) of this Act;

“conservation burden” shall be construed in accordance with section 27(1) of this Act;

“development value burden” and “development value” shall be construed in accordance with section 33 of this Act;

“notary public” includes any person duly authorised by the law of the country (other than Scotland) in which the swearing or affirmation takes place to administer oaths or receive affirmations in that other country;

“real burden”—

(a) includes—

(i) a right of pre-emption;

(ii) a right of redemption; or

(iii) a right (other than an exclusive right) of fishing or game,

provided that it is constituted as a real burden; but

(b) does not include a pecuniary real burden;

“registering” means registering an interest in land (or information relating to such an interest) in the Land Register of Scotland or, as the case may be, recording a document in the Register of Sasines; and cognate expressions shall be construed accordingly; and

“superior” means a person who has right to the immediate superiority or to any over-superiority, whether or not he has completed title (and if more than one person comes within either of those descriptions then, in relation to that description, the person who has most recently acquired such right) and “former superior” shall be construed accordingly.

PART 5

ENTAILS

50 Disentailment on appointed day

(1) Land which, immediately before the appointed day, is held under an entail is disentailed on that day.

(2) Section 32 of the Entail Amendment Act 1848 (c. 36) (which makes provision as respects an instrument of disentail executed and recorded under that Act) shall apply

to the effect of disentailment by subsection (1) above as that section applies to the effect of such an instrument so executed and recorded.

51 Compensation for expectancy or interest of apparent or other nearest heir in an entailed estate

- (1) Where, immediately before the appointed day—
- (a) land is held under an entail; and
 - (b) the consent of a person who is an apparent or other nearest heir is required to any petition for authority of the court for the purpose of presenting an instrument of disentail,

the valuation of any expectancy or interest of the person, which on his refusal to give such consent would fall, before the appointed day, to be ascertained under section 13 of the Entail (Scotland) Act 1882 (c. 53) may, within two years after the appointed day, be referred by him to, and determined by, the Lands Tribunal.

- (2) The Tribunal shall direct that any sum ascertained by them in a valuation by virtue of subsection (1) above shall be secured on the land, for the benefit of the person, in such manner as they think fit.

52 Closure of Register of Entails

The Keeper of the Registers of Scotland shall, immediately before the appointed day, close the Register of Entails; and as soon as is practicable thereafter, he shall transmit that register to the Keeper of the Records of Scotland for preservation.

PART 6

MISCELLANEOUS

Discharge of certain rights and extinction of certain obligations and payments

53 Discharge of rights of irritancy

- (1) All rights of irritancy held by a superior are, on the day on which this section comes into force, discharged; and on that day any proceedings already commenced to enforce any such right shall be deemed abandoned and may, without further process and without any requirement that full judicial expenses shall have been paid by the pursuer, be dismissed accordingly.
- (2) Subsection (1) above shall not affect any cause in which final decree (that is to say, any decree or interlocutor which disposes of the cause and is not subject to appeal or review) is granted before the coming into force of this section.

54 Extinction of superior's rights and obligations qua superior

- (1) Subject to section 13, to Part 4, and to section 60(1), of this Act, a right or obligation which, immediately before the appointed day, is enforceable by, or as the case may be against, a superior qua superior shall, on that day, be extinguished.
- (2) Subject to subsection (3) below—

- (a) on or after the appointed day, no proceedings for such enforcement shall be commenced;
 - (b) any proceedings already commenced for such enforcement shall be deemed to have been abandoned on that day and may, without further process and without any requirement that full judicial expenses shall have been paid by the pursuer, be dismissed accordingly; and
 - (c) any decree, or interlocutor, already pronounced in proceedings for such enforcement shall be deemed to have been reduced, or as the case may be recalled, on that day.
- (3) Subsection (2) above shall not affect any proceedings, decree or interlocutor in relation to—
- (a) a right of irritancy held by a superior; or
 - (b) a right to recover damages or to the payment of money.

55 Abolition of thirlage

Any obligation of thirlage which has not been extinguished before the appointed day is extinguished on that day.

56 Extinction etc. of certain payments analogous to feuduty

- (1) The provisions of Part 3 of this Act shall apply as regards ground annual, skat, teind, stipend, standard charge, dry multures (including compensation payable in respect of commutation pursuant to the Thirlage Act 1799 (c. 55)) and, subject to the exceptions mentioned in subsection (2) below, as regards any other perpetual periodical payment in respect of the tenure, occupancy or use of land or under a land obligation, as those provisions apply as regards feuduty; but for the purposes of that application—
- (a) references in the provisions to “vassal” and “superior” shall be construed as references to, respectively, the payer and the recipient of the ground annual, skat, teind, stipend, standard charge, dry multures or other payment in question (“former vassal” and “former superior” being construed accordingly); and
 - (b) a form (and its explanatory note) contained in a schedule to this Act shall be modified so as to accord with the kind of payment to which it relates.
- (2) The exceptions are any payments—
- (a) in defrayal of, or as a contribution towards, some continuing cost related to land; or
 - (b) made under a heritable security.
- (3) The definition of “land obligation” in subsection (2) of section 1 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) shall apply for the purposes of this section as it applies for the purposes of that section.
- (4) Nothing in subsections (1) to (3) above shall be taken to prejudice the tenure, occupancy or use of land.

57 Extinction by prescription of obligation to pay redemption money for feuduty, ground annual etc

Notwithstanding the terms of Schedule 1 to the Prescription and Limitation (Scotland) Act 1973 (c. 52) (which defines obligations affected by prescriptive periods of five years), any obligation under section 5 (redemption of feuduty, ground annual etc. on transfer for valuable consideration) or 6 (redemption of feuduty, ground annual etc. on compulsory acquisition) of the Land Tenure Reform (Scotland) Act 1974 (c. 38) to pay redemption money is an obligation to which section 6 of that Act of 1973 (extinction of obligation by prescriptive period of five years) applies; and for the purposes of that application, the reference in subsection (1) of section 6 of that Act of 1973 to the

“appropriate date” is a reference to the date of redemption within the meaning of—

- (a) except in the case mentioned in paragraph (b) below, section 5 (read, as the case may be, with section 6(2)(a)); or
- (b) in the case of an obligation arising out of the acquisition of land by means of a general vesting declaration, section 6(4),

of that Act of 1974.

The Crown, the Lord Lyon and Barony

58 Crown application

- (1) This Act binds the Crown and accordingly such provision as is made by section 2 of this Act as respects feudal estates of dominium shall apply to the superiority of the Prince and Steward of Scotland and to the ultimate superiority of the Crown; but nothing in this Act shall be taken to supersede or impair any power exercisable by Her Majesty by virtue of Her prerogative.
- (2) Without prejudice to the generality of subsection (1) above, in that subsection—
 - (a) Her Majesty’s prerogative includes the prerogative of honour; and
 - (b) “any power exercisable by Her Majesty by virtue of Her prerogative” includes—
 - (i) prerogative rights as respects ownerless or unclaimed property; and
 - (ii) the *regalia majora*.

59 Crown may sell or otherwise dispose of land by disposition

It shall be competent for the Crown, in selling or otherwise disposing of any land, to do so by granting a disposition of that land.

60 Preserved right of Crown to maritime burdens

- (1) Where, immediately before the appointed day, the Crown has the right as superior to enforce a real burden against part of the sea bed or part of the foreshore, then, on and after that day, the Crown shall—
 - (a) subject to any counter-obligation, have title to enforce; and
 - (b) be presumed to have an interest to enforce,
 the burden; and any burden as respects which the Crown has such title and interest shall, on and after the appointed day, be known as a “maritime burden”.
- (2) The right of the Crown to a maritime burden may not be assigned.

- (3) For the purposes of this section—
“sea bed” means the bed of the territorial sea adjacent to Scotland; and
“territorial sea” includes any tidal waters.
- (4) In this section, “real burden” has the same meaning as in Part 4 of this Act.

61 Mines of gold and silver

The periodical payment to the Crown, in respect of the produce of a mine which by the Royal Mines Act 1424 (c. 12) belongs to the Crown, of an amount which is not fixed but is calculated as a proportion of that produce is not—

- (a) a payment to the Crown qua superior for the purposes of section 54 of this Act;
- (b) a perpetual periodical payment for the purposes of section 56 of this Act; or
- (c) a feuduty for the purposes of Part 3 of this Act.

62 Jurisdiction and prerogative of Lord Lyon

Nothing in this Act shall be taken to supersede or impair the jurisdiction or prerogative of the Lord Lyon King of Arms.

63 Baronies and other dignities and offices

- (1) Any jurisdiction of, and any conveyancing privilege incidental to, barony shall on the appointed day cease to exist; but nothing in this Act affects the dignity of baron or any other dignity or office (whether or not of feudal origin).
- (2) When, by this Act, an estate held in barony ceases to exist as a feudal estate, the dignity of baron, though retained, shall not attach to the land; and on and after the appointed day any such dignity shall be, and shall be transferable only as, incorporeal heritable property (and shall not be an interest in land for the purposes of the Land Registration (Scotland) Act 1979 (c. 33) or a right as respects which a deed can be recorded in the Register of Sasines).
- (3) Where there is registered, before the appointed day, a heritable security over an estate to which is attached the dignity of baron, the security shall on and after that day (until discharge) affect—
- (a) in the case of an estate of *dominium utile*, both the dignity of baron and the land; and
 - (b) in any other case, the dignity of baron.
- (4) In this section—
“conveyancing privilege” includes any privilege in relation to prescription;
“dignity” includes any quality or precedence associated with, and any heraldic privilege incidental to, a dignity; and
“registered” has the same meaning as in Part 4 of this Act.

*Kindly Tenants of Lochmaben***64 Abolition of Kindly Tenancies**

- (1) The system of land tenure whereby the persons known as the Kindly Tenants of Lochmaben hold land on perpetual tenure without requiring to procure infeftment is, on the appointed day, abolished.
- (2) On the appointed day the interest of a Kindly Tenant shall forthwith become the ownership of the land (which shall be taken to include any right of salmon fishing inseverable from the kindly tenancy); and, in so far as is consistent with the provisions of this Act, the land shall be subject to the same subordinate real rights and other encumbrances as was the kindly tenancy.
- (3) A right of salmon fishing inseverable from a kindly tenancy shall on and after the appointed day be inseverable from the ownership of the land in question.

*Miscellaneous***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).
- (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.

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—
 - (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.

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,

Status: This is the original version (as it was originally enacted).

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;
- (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.”.

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 assignment, 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.

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.

PART 7

GENERAL

71 The appointed day

The Scottish Ministers may, for the purposes of this Act, by order appoint a day (in this Act referred to as the (“appointed day”, being a day which—

- (a) falls not less than six months after the order is made; and
- (b) is one or other of the terms of Whitsunday and Martinmas.

72 Interpretation

In this Act, unless the context otherwise requires—

- “land” includes all subjects of heritable property which, before the appointed day, are, or of their nature might be, held of a superior according to feudal tenure;
- “Lands Tribunal” means Lands Tribunal for Scotland; and
- “the specified day” and “the transitional period” shall be construed in accordance with section 20(6) of this Act.

73 Feudal terms in enactments and documents: construction after abolition of feudal system

- (1) Where a term or expression, which before the appointed day would ordinarily, or in the context in which it is used, depend for its meaning on there being a feudal system of land tenure, requires to be construed, in relation to any period from that day onwards—
 - (a) in an enactment (other than this Act) passed;
 - (b) in an enactment contained in subordinate legislation made; or
 - (c) in a document executed, before the appointed day, then in so far as the context admits, where the term or expression is, or contains, a reference to—
 - (i) the *dominium utile* of the land, that reference shall be construed either as a reference to the land or as a reference to the ownership of that land;
 - (ii) an estate in land, that reference shall be construed as a reference to a right in land and as including ownership of land;
 - (iii) a vassal in relation to land, that reference shall be construed as a reference to the owner of the land;
 - (iv) feuing, that reference shall be construed as a reference to disposing;
 - (v) a feu disposition, that reference shall be construed as a reference to a disposition;
 - (vi) taking infeftment, that reference shall be construed as a reference to completing title,analogous terms and expressions being construed accordingly.
- (2) On and after the appointed day, any reference in any document executed before that day to a superior shall, where that reference requires to be construed in relation to a real burden which a person is entitled, by virtue of section 18, 19, 20, 23, 28 or, as the case may be, 60 of this Act, to enforce on and after that day, be construed as a reference to that person.

- (3) Subsection (1) above is without prejudice to section 76 of, and schedules 12 and 13 to, this Act or to any order made under subsection (3) of that section.
- (4) In subsection (1) above—
- (a) in paragraph (a), “enactment” includes a local and personal or private Act; and
 - (b) in paragraph (b), “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) (but includes subordinate legislation made under an Act of the Scottish Parliament).

74 Orders, regulations and rules

- (1) Any power of the Scottish Ministers under this Act to make orders, regulations or rules shall be exercisable by statutory instrument; and a statutory instrument containing any such orders, regulations or rules, other than an order under section 71, 76(3) or 77(4), shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (2) A statutory instrument containing an order under section 76(3) of this Act shall not be made unless a draft of the instrument has been—
- (a) laid before; and
 - (b) approved by a resolution of, the Scottish Parliament.

75 Saving for contractual rights

As respects any land granted in feu before the appointed day, nothing in this Act shall affect any right (other than a right to feuduty) included in the grant in so far as that right is contractual as between the parties to the grant (or, as the case may be, as between one of them and a person to whom any such right is assigned).

76 Minor and consequential amendments, repeals and power to amend or repeal enactments

- (1) Schedule 12 to this Act, which contains minor amendments and amendments consequential upon the provisions of this Act, shall have effect.
- (2) The enactments mentioned in schedule 13 to this Act are hereby repealed to the extent specified in the second column of that schedule.
- (3) The Scottish Ministers may by order make such further amendments or repeals, in such enactments as may be specified in the order, as appear to them to be necessary or expedient in consequence of any provision of this Act.
- (4) In this section “enactment” has the same meaning as in section 73(1)(a) of this Act.

77 Short title and commencement

- (1) This Act—
- (a) may be cited as the Abolition of Feudal Tenure etc. (Scotland) Act 2000; and
 - (b) subject to subsections (2) and (4) below, comes into force on Royal Assent.
- (2) Subject to subsection (4)(c) and (d) below, there shall come into force on the appointed day—

Status: This is the original version (as it was originally enacted).

- (a) sections 1 and 2, 4 to 13, 32, 35 to 37, 46, 50 and 51, 54 to 57, 59 to 61, 63 to 66, 68 to 70, 73, 75 and 76(1) (except in so far as relating to paragraph 30(23)(a) of schedule 12) and (2);
 - (b) schedules 1 to 3;
 - (c) subject to paragraph 46(3) of schedule 12, that schedule, except paragraph 30(23)(a); and
 - (d) schedule 13.
- (3) Note 1 to Schedule 2 to the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) shall be deemed to have been originally enacted as amended by the said paragraph 30(23)(a).
- (4) There shall come into force on such day as the Scottish Ministers may by order appoint—
- (a) sections 17 to 31, 33, 34, 38 to 45 and 47 to 49;
 - (b) schedules 5 to 11;
 - (c) in schedule 12, paragraph 39(6); and
 - (d) in so far as relating to section 15(2)(a) of the Land Registration (Scotland) Act 1979 (c. 33), section 76(2) and schedule 13,

and different days may be so appointed for different provisions; but the period between any such order being made and the day appointed for the coming into force of any provision to which that order relates shall be not less than six months.