

# Entail Amendment Act 1848

#### 1848 CHAPTER 36 11 and 12 Vict

An Act for the amendment of the law of entail in Scotland.

[14th August 1848]

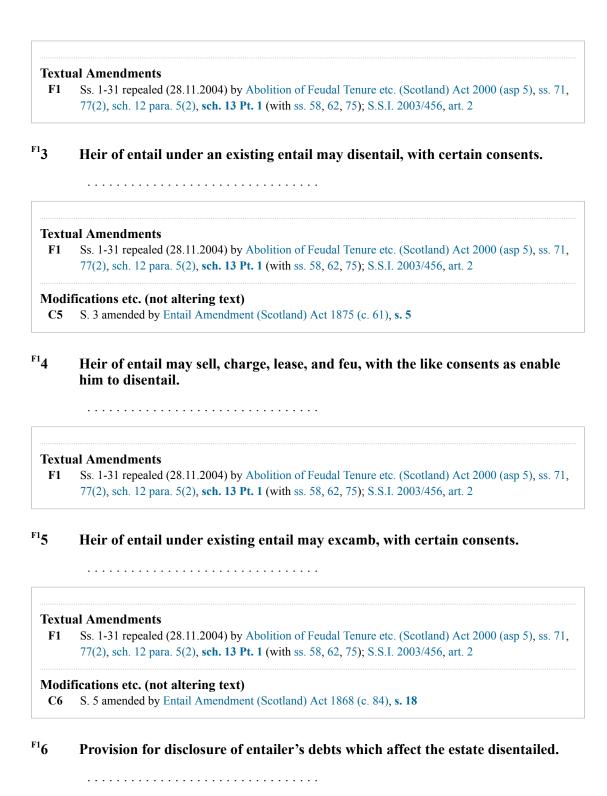
Whereas the law of entail in Scotland has been found to be attended with serious evils, both to heirs of entail and to the community at large, and it is expedient that the same be amended in manner herein-after provided for:

#### **Modifications etc. (not altering text)**

- C1 Short title "The Entail Amendment Act 1848" given by Short Titles Act 1896 (c. 14)
- C2 Act extended by Entail Cottages Act 1860 (c. 95)
- C3 Certain words of enactment repealed by Statute Law Revision Act 1891 (c. 67)
- C4 Accumulations Act 1800 (c. 98) cited or referred to by its short title under authority of Statute Law Revision Act 1893 (c. 14), s. 3
- [F11.] Heir born after the date of any future entail may disentail the estate; born before, may do so with consent of heir next in succession, being heir apparent under the entail.

#### **Textual Amendments**

- F1 Ss. 1-31 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(2), sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- Heir in possession under an existing entail born after 1st August 1848 may disentail; born before that date, may do so with consent of heir next in succession, being heir apparent born after 1st August 1848.

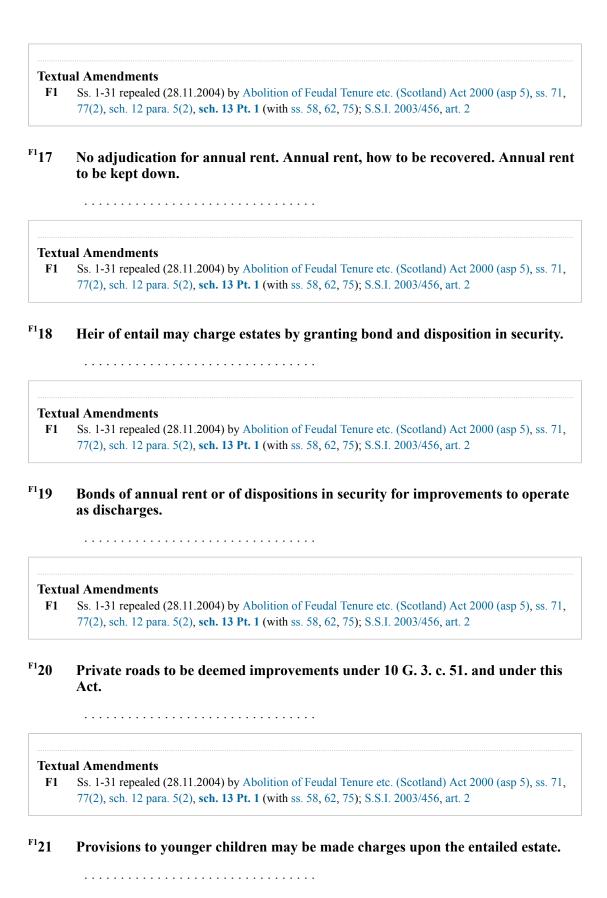


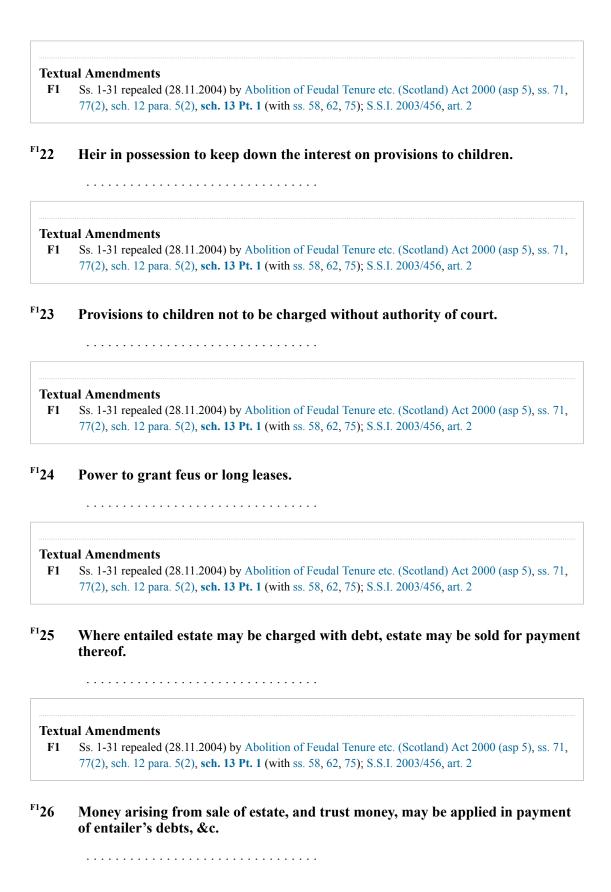
#### **Textual Amendments**

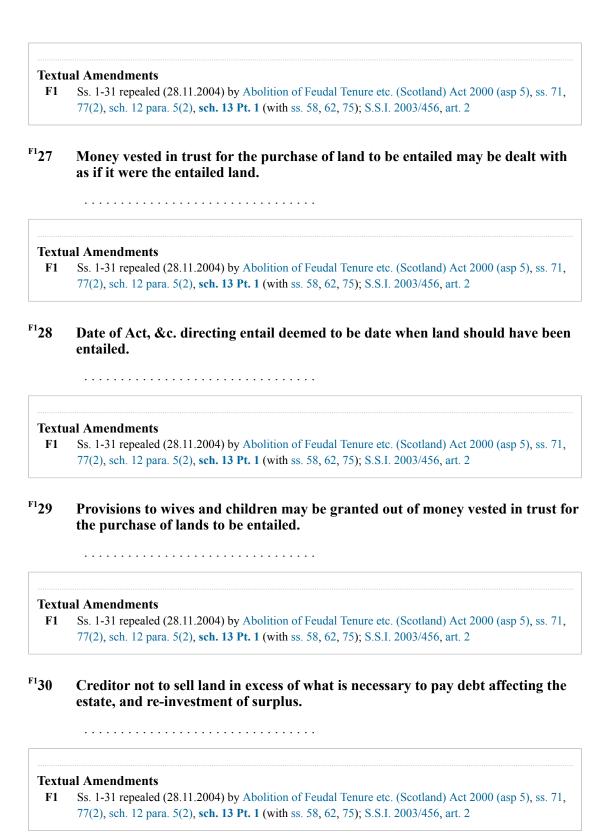
F1 Ss. 1-31 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(2), sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

<sup>F1</sup> 7	Creditors in entailer's debts, &c. using inhibition not to be affected by instrument of disentail.					
Toyt	ual Amendments					
F1	Ss. 1-31 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(2), <b>sch. 13 Pt. 1</b> (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2					
<sup>F1</sup> 8	Settlements by marriage contract not to be disappointed.					
F1	ual Amendments Ss. 1-31 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(2), sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2					
Mod C7	ifications etc. (not altering text) S. 8 saved by Entail Amendment (Scotland) Act 1875 (c. 61), s. 5(3)					
<sup>F1</sup> 9	Heirs of entail not to give consent in opposition to creditors in debts now existing.					
Text	ual Amendments					
F1	Ss. 1-31 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(2), <b>sch. 13 Pt. 1</b> (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2					
<sup>F1</sup> 10	Heir apparent under future tailzie not to give consent in opposition to his creditors.					
To4-						
F1	ual Amendments Ss. 1-31 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(2), sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2					
<sup>F1</sup> 11	Creditor of an heir empowered to disentail may affect the estate for payment of his debt.					









''31	Guai	rdians	may	consent f	or minors.	

#### **Textual Amendments**

F1 Ss. 1-31 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(2), sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

#### Form and effect of instrument of disentail, and registration thereof.

An instrument of disentail under this Act F3... shall have the effect of absolutely freeing, relieving, and disencumbering the entailed estate to which such instrument applies, and the heir of entail in possession of the same, and his successors, of all the prohibitions, conditions, restrictions, limitations, and clauses irritant and resolutive, of the tailzie under which such estate is held, and of entitling such heir in possession to alter the course of succession prescribed by such tailzie, and to alienate and dispone such estate, onerously or gratuitously, and to burden the same with debt, and to do any other act or deed in relation thereto competent by law to any absolute proprietor in fee simple: Provided always, that such instrument of disentail shall in no way defeat or affect injuriously any charges, burdens, or incumbrances, or rights or interests, of whatsoever kind or description, held by third parties, and lawfully affecting the fee or rents of such estate, or such heir in possession or his successors, other than the rights and interests of the heirs substitute of entail in or through the tailzie under which such estate is held, but that all such charges, burdens, and incumbrances, and rights and interests, other than as aforesaid, shall remain at least as valid and operative in all respects as if no such instrument of disentail had been executed or recorded.

#### **Textual Amendments**

Words in s. 32 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(3), sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

#### **Modifications etc. (not altering text)**

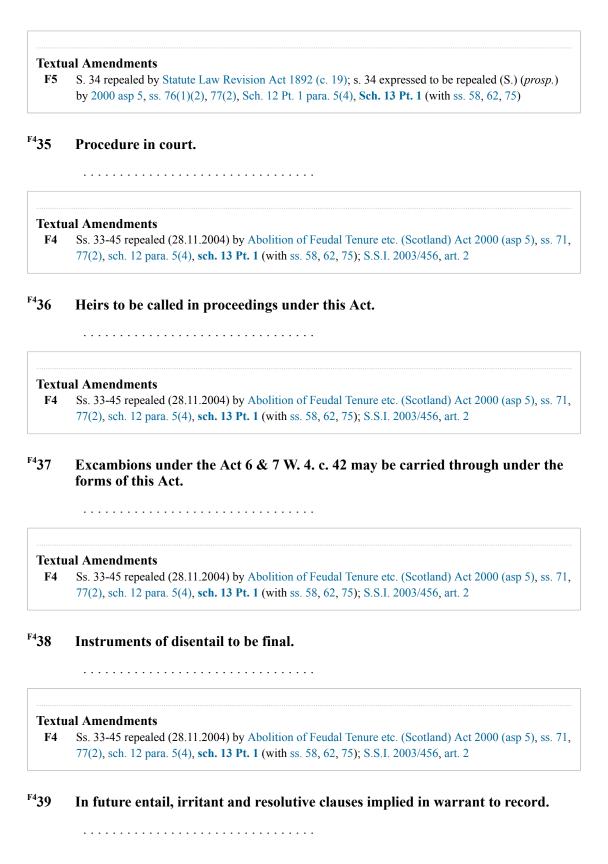
S. 32 applied (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), **ss. 50(2)**, 71, 77(2) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

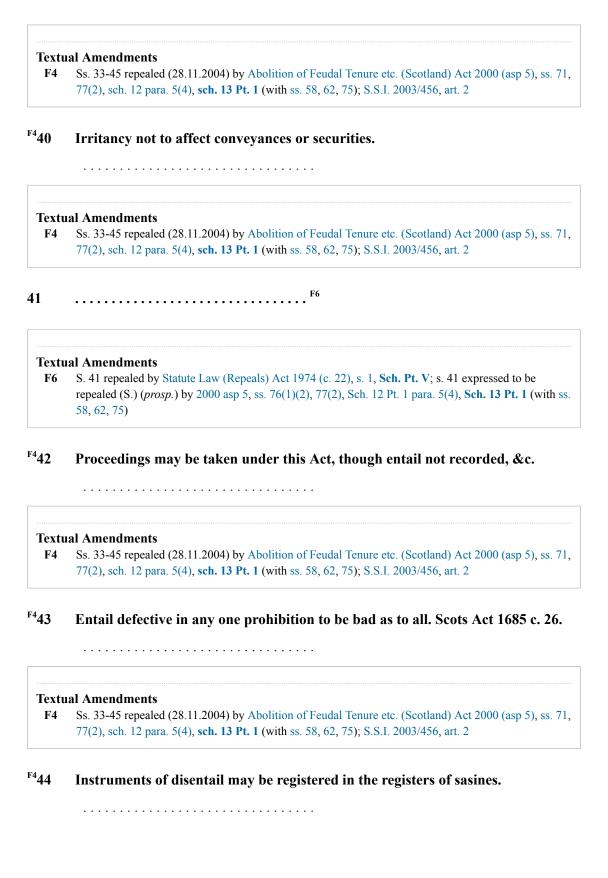
# F433 Applications to the court.

#### **Textual Amendments**

F4 Ss. 33-45 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(4), sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

34 .....<sup>F5</sup>





#### **Textual Amendments**

**F4** Ss. 33-45 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(4), **sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

# No irritancy or forfeiture to be incurred for anything done under this Act.

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#### **Textual Amendments**

**F4** Ss. 33-45 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(4), **sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

46 .....<sup>F7</sup>

#### **Textual Amendments**

F7 Ss. 46, 53 repealed by Statute Law Revision Act 1875 (c. 66)

#### 47 Act not to be defeated by trusts;

Where any [F8 land] in Scotland shall, by virtue of any trust disposition or settlement or other deed of trust whatsoever F9..., be in the lawful possession, either directly or through any trustees for his behoof, of a party of full age born after the date of such trust disposition or settlement or other deed of trust, such party shall not be in any way affected by any prohibitions, conditions, restrictions, or limitations which may be contained in such trust disposition or settlement or other deed of trust, or by which the same or the interest of such party therein may bear to be qualified, such prohibitions, conditions, restrictions, or limitations being of the nature of prohibitions, conditions, restrictions, or limitations of entail, or intended to regulate the succession of such party, or to limit, restrict, or abridge his possession or enjoyment of such [F8] and in favour of any future heir, and such party shall be deemed and taken to o... proprietor of such [F8 land], and it shall be lawful to such party to make application by way of summary petition to the Court of Session, setting forth the facts, and referring to this Act, and craving the court to pronounce an act and decree declaring him <sup>F10</sup>... proprietor of such [F8 land], and unaffected by any such conditions, provisions, restrictions, or limitations; and the court shall proceed in such petition as may be just, and shall have power to pronounce an act and decree declaring such party to be F10... proprietor of such [F8land], and unaffected as aforesaid; and such act and decree may be recorded in the register of sasines, and being so recorded shall have all the operation and effect of the most formal and valid disposition to such party, and his heirs and assignees whomsoever, of such  $[^{F11}]$  and  $[^{F11}]$  duly recorded: Provided always, that the rights of  $[^{F12}]$ ... all parties holding  $[^{F13}]$  securities over such land, and all rights which are held independently of such trust disposition or settlement or other deed of trust, shall be as they are hereby reserved entire.

#### **Textual Amendments**

- **F8** Words in s. 47 substituted (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), **sch. 12 para. 5(5)(a)** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F9 Words in s. 47 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(5)(b), sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- **F10** Words in s. 47 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(5)(c), sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- **F11** Words in s. 47 substituted (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(5)(d) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- **F12** Words in s. 47 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(5)(e), sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- **F13** Words in s. 47 substituted (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(5)(f) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

#### **Modifications etc. (not altering text)**

C9 S. 47 applied by Entail (Scotland) Act 1914 (c. 43), s. 8

#### 48 or by life-rents.

[F14]Where any land] in Scotland shall, by virtue of any deed F15..., be held in liferent by a party of full age born after the date of such deed, such party shall not be in any way affected by any prohibitions, conditions, restrictions, or limitations which may be contained in such deed, or by which the same or the interest of such party therein may bear to be qualified, and such party shall be deemed and taken to be the F15... proprietor of [F16] such land], and it shall be lawful to such party to obtain and record an act and decree of the Court of Session in the like form and manner and in the like terms and with the like operation and effect as is herein-before provided with reference to an act and decree of the said court in the case of deeds of trust: Provided always, that the rights of F15... all parties holding securities [F17] over such land], and all rights which shall be held independently of the deed by which such liferent is constituted, shall be as they are hereby reserved entire.

#### **Textual Amendments**

- **F14** Words in s. 48 substituted (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(6)(a) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F15 Words in s. 48 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(6)(b), sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- **F16** Words in s. 48 substituted (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(6)(c) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- **F17** Words in s. 48 substituted (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(6)(d) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

#### **Modifications etc. (not altering text)**

C10 S. 48 applied by Entail (Scotland) Act 1914 (c. 43), s. 8; excluded by Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70), s. 18(4)

#### 49 or by leases.

Where any land <sup>F18</sup>... in Scotland shall, by virtue of any tack, assignation of tack, or other deed or writing <sup>F18</sup>..., be held in lease, either directly or through trustees for his behoof, by a party of full age born after the date of such tack, assignation of tack, or other deed or writing, such party shall not be in any way affected by any prohibitions, conditions, restrictions, or limitations which may be contained in such tack, assignation of tack, or other deed or writing, or by which the same or the interest of such party therein may be qualified, such prohibitions, conditions, restrictions, or limitations being of the nature of prohibitions, conditions, restrictions, or limitations of entail, or intended to regulate the succession of such party, or to limit, restrict, or abridge his possession or enjoyment of such land <sup>F18</sup>... in favour of any future heir: Provided always, that it shall be lawful to the proprietor of whom such lease is held to enforce any prohibitions, conditions, restrictions, or limitations contained in such tack, assignation of tack, or other deed or writing which shall have been inserted therein for the bona fide purpose of protecting the just rights and interests of such proprietor, in so far as such enforcement may be necessary in order to such protection.

#### **Textual Amendments**

**F18** Words in s. 49 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(7), sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

#### **Modifications etc.** (not altering text)

C11 S. 49 applied by Entail (Scotland) Act 1914 (c. 43), s. 8

# F1950 Consents to be in writing and to be irrevocable.

#### **Textual Amendments**

**F19** S. 50 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(8), **sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

### F2051 Court may make acts of sederunt.

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#### **Textual Amendments**

S. 51 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(8), sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

## [F2152 Interpretation

In this Act, the word "land" shall include all heritages.]

#### **Textual Amendments**

**F21** S. 52 substituted (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(9) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

53 .....<sup>F22</sup>

#### **Textual Amendments**

F22 Ss. 46, 53 repealed by Statute Law Revision Act 1875 (c. 66)

## F23SCHEDULE TO WHICH THE FOREGOING ACT REFERS

#### **Textual Amendments**

**F23** Sch. repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 5(10), **sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

F23

#### **Changes to legislation:**

Entail Amendment Act 1848 is up to date with all changes known to be in force on or before 12 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

View outstanding changes

#### Changes and effects yet to be applied to:

- s. 47-49 repealed in part by 2024 asp 2 s. 45(3)(a)