

ABOLITION OF FEUDAL TENURE ETC. (SCOTLAND) ACT 2000

EXPLANATORY NOTES

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The Act

3. The Act will largely implement the recommendations of the Scottish Law Commission Report on Abolition of the Feudal System (Scot Law Com No 168). It will abolish the feudal system of land tenure. Land previously held feudally will be converted into simple ownership. Vassals will become owners and superiors will disappear. All remaining feuduties will be extinguished as will any obligation to pay redemption money under the Land Tenure Reform (Scotland) Act 1974.
4. Real burdens (i.e. conditions on land) in feudal deeds (such as restrictions on the use to be made of property) will cease to be enforceable by superiors. Rights of enforcement of third parties - e.g. owners of other flats in a tenement whose properties are protected by the burden - will not be affected. What will be extinguished by the Act is the superior's right to enforce the burden. Some feudal real burdens, however, will be preserved as ordinary real burdens and so will then be subject to the existing law on real burdens generally. They will be in the same position as real burdens created in an ordinary disposition. The preserved burdens will be classified in three categories: neighbourhood burdens (where the right to enforce the burden is reallocated to other land), conservation burdens and maritime burdens. The superior's right to enforce in another category – common facilities burdens – will be converted into a right for whoever owns the land intended to be protected by those burdens. In many cases, those owners have such rights under the present law, but for the case where they might not, this will protect them.
5. Compensation will be payable to superiors for the loss of the right to feuduties on the same basis as compensation is payable under the Land Tenure Reform (Scotland) Act 1974: it will be paid by the former vassals. Compensation will also be available for the loss of the right to certain real burdens which reserve development value to the superior – where the price was reduced or waived altogether in return for the burden. Compensation will not be payable for the loss of the bare superiority interest itself – and so for the loss of the right to charge vassals for waivers of conditions which the superior will no longer have a right to enforce.
6. Certain other archaic forms of land tenure and payments will be abolished. Entails, already defunct in practice, will also be abolished. Baronial titles will be separated from the land. The Act provides for the repeal of 46 entire Acts, as well as over 300 sections and Schedules and many obsolete and unnecessary words in other Acts. The Act provides for a prohibition on the granting of leases of non-residential land for a period exceeding 175 years (residential leases are already restricted to a period of 20 years). It makes new provision for conveyancing and the ownership of land in Scotland. Some of the reforms and repeals are not strictly consequential on the abolition of the feudal system.

Background

7. The system of land tenure in Scotland is overwhelmingly feudal in nature. In theory, this means that the land is held under the Crown as ultimate feudal superior. Historically, the Crown would make a grant of land in return for military or other services and the grantees would in turn make sub-grants for other services and so on. Those making grants - the “superiors” - retained a legal interest in the land (“dominium directum”), and so a hierarchical structure was created with each property having a number of owners, co-existing simultaneously. Only one of these, the “vassal”, has what in normal language would be regarded as ownership of the property (“dominium utile”).
8. The service which the vassal had to perform for the superior was gradually replaced by a financial payment – feuduty. The Land Tenure Reform (Scotland) Act 1974 prohibited the imposition of new feuduties and provided for the redemption of existing ones.
9. Feudal deeds have and still do generally also impose conditions on the property feued – e.g. use, maintenance, building restrictions. These are feudal real burdens and are enforceable by the superior in that capacity. As explained in paragraph 4, the Act will extinguish many of these conditions (real burdens). The superiors and their concurrent rights will disappear, as will the superior’s obligations, though contractual rights and obligations are not affected by the Act. Only the owner will continue to have a right to the land.
10. After the abolition of the feudal system there will still be restrictions on how an owner can use land. The planning and building control systems will for example, remain. The Scottish Law Commission estimate that only around half of all real burdens affecting property in Scotland are imposed in feudal deeds. Equivalent real burdens can be and are created outwith the feudal system in ordinary dispositions. These non-feudal real burdens will be unaffected by the Act which is concerned only with the consequences for feudal real burdens of the abolition of the feudal system of land tenure. The Scottish Law Commission issued a Discussion Paper on this very closely related subject in October 1998 proposing reform of the general law of real burdens as regards matters which have nothing to do with the feudal system (Scot Law Com Dp No 106) and will submit its final Report this autumn. The Scottish Executive intends to introduce a further Bill to take forward such reform.
11. Abolition of feudal tenure will apply equally in urban and rural areas, perhaps having greater practical impact in the former. For example, the vast majority of council houses which have been bought under the right to buy legislation were feued by local authorities when they were sold in order that the authorities could impose conditions on future use. Local authorities therefore have extensive superiority interests. Abolition of the feudal system will not address the land use difficulties which arise from the landlord/tenant relationship in rural areas. There is an essential distinction to be drawn between the “feudal” system which is a technical legal framework for ownership of land throughout Scotland and the rural land ownership structure characterised by large estates, which is often condemned as being “feudal” in nature. Such problems will be addressed by other elements in the overall land reform action plan, including the land reform Act which is also to be introduced in the first session of the Parliament.
12. The Act’s main purpose is to abolish the feudal system of land tenure in Scotland and to replace it with a system of simple ownership.
13. The Act is in 7 Parts.

Part 1: Abolition of Feudal Tenure

14. This Part covers actual abolition and confers outright ownership of land on those who were formerly vassals under the feudal system.

Part 2: Land Transfers etc. on and after appointed day

15. This Part restates, in non-feudal language, the established rules for the transfer of ownership of land in Scotland.

Part 3: Feuduties

16. This Part covers the extinction of all remaining feuduties, the claim by the superior for a compensatory payment, the payment of arrears and the disclosure of certain information.

Part 4: Real Burdens

17. This Part of the Act extinguishes superiors' rights to enforce feudal burdens and covers the arrangements for the reallocation of enforcement rights, common facilities burdens, conservation burdens, compensation for development value real burdens and the registration of notices, agreements and applications to the Lands Tribunal to give effect to these arrangements.

Part 5: Entails

18. This Part provides for the disentailment of entailed land and the closure of the Register of Entails.

Part 6: Miscellaneous

19. This Part deals with the discharge of certain rights and the extinction of certain obligations and payments, and also deals with the Crown, the Lord Lyon, Barony titles, the abolition of Kindly Tenancies, liferents, the availability of title deeds, and the prohibition on leases for periods of more than 175 years.

Part 7: General

20. This Part of the Act makes provision for the actual date of abolition of the feudal system, makes provision for the meaning of 'land', stipulates how feudal terms in enactments and documents should be interpreted following abolition, contains a saving for the enforceability of contractual rights and provides for consequential amendments and repeals.