

ABOLITION OF FEUDAL TENURE ETC. (SCOTLAND) ACT 2000

EXPLANATORY NOTES

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Commentary on Sections

Part 1: Abolition of Feudal Tenure

Section 1: Abolition on appointed day

21. *Section 1* abolishes the feudal system of land tenure as from the "appointed day". In terms of section 71 the appointed day will be such day as the Scottish Ministers may specify by a statutory instrument.

Section 2: Consequences of abolition

22. *Section 2* converts land held under feudal tenure into simple ownership of the land.
23. *Subsection (1)* makes it clear that those who hold land as vassals under the feudal system, and are technically said to own the 'dominium utile', will automatically become owners of that land at the date of abolition. Abolition of the feudal system will not affect non-feudal real burdens and property will remain subject to planning, environmental and any other applicable law.
24. *Subsection (2)* abolishes all feudal superiorities and mid-superiorities, including the paramount superiority of the Crown. The prerogative rights and powers of the Crown as Sovereign or Head of State are not affected (see section 58).
25. *Subsection (3)* prohibits the creation of any new feus after the date of abolition.

Section 3: Amendment of Land Registration (Scotland) Act 1979

26. Abolition of the feudal system will mean that the Land Register will contain obsolete material, particularly obsolete feudal burdens. This section contains technical amendments designed to ensure that such material may be safely eliminated over time.
27. *Paragraph (a)* ensures that the Keeper of the Registers will be entitled to refuse to accept applications for registration in the Land Register of Scotland which relate in whole or in part to superiorities. This will eventually cleanse the register of superiority interests. In the absence of this provision people might attempt to register 'mixed estates' (consisting partly of abolished rights in land) without making any attempt to distinguish between what has been abolished and what remains.
28. The amendments to the 1979 Act in *paragraphs (b) and (c)* are designed to enable the Keeper to rectify the register to take account of abolition of the feudal system, and anything done in consequence of abolition, and to do so without fear of claims for indemnity. The amendments will ensure that obsolete material, particularly obsolete

*These notes relate to the Abolition of Feudal Tenure etc. (Scotland)
Act 2000 (asp 5) which received Royal Assent on 14 July 2000*

feudal burdens, may be safely removed from the Register over time. The appearance on the Register of interests in land or burdens which are extinguished by the Act will constitute an inaccuracy in the Register. The process of correction of inaccuracies is known as rectification. The general policy is that the Keeper should be able to rectify the Register to take account of the effect of feudal abolition. The Keeper currently has power to rectify an inaccuracy in the Register but cannot do so to the prejudice of a proprietor in possession. Section 3 of the Act makes it clear that the Keeper may rectify the Register to take account of the abolition of the feudal system without having to concern himself as to whether or not to do so would prejudice the proprietor in possession or give rise to a claim on his indemnity. It is intended to facilitate rectification of the Register by the removal of obsolete entries. If the Keeper fails to enter on or remove from the Register an enforceable burden, for example a burden that has been saved under the Act, the omission of that burden from the Register will be an inaccuracy. It is not however intended to enable the Keeper to correct such an inaccuracy by the inclusion on the Register of the burden where to do so would prejudice a proprietor in possession. The underlying principle is that people should be able to rely with certainty on the information contained in the Register. The Keeper will be able to rectify the Register under section 9 of the Land Registration (Scotland) Act 1979 to remove inaccuracies arising due to the operation of the Act or due to anything done apparently under or by virtue of the Act. In general terms, the Keeper is obliged to indemnify persons for loss which arise as a result of a rectification of the Register. Section 12(3) of the Land Registration (Scotland) Act 1979 sets out various circumstances in which no entitlement to indemnity arises. Section 3 of the Act adds to those circumstances the case where the loss arises in consequence of a rectification of or an omission to rectify an inaccuracy which has arisen due to the abolition of the feudal system.

29. Paragraphs (b) and (c) will allow the Keeper to delete superiority titles, feuduty and real burdens enforceable only by superiors. Paragraph (b) makes it clear that the provisions which facilitate rectification of the Register to take account of feudal abolition apply not only where a rectification is required, for example, due to a court order, but where the Keeper exercises his discretion to rectify the Register. Paragraph (b) also makes it clear that the provision is intended to cover not only acts done by virtue of the Act, but also inaccuracies arising as a result of acts purportedly undertaken under it. An example might be an inaccuracy resulting in the Register from the Keeper giving effect to an invalid notice. The exclusion of sections 4 (ownership of land) and 65 (creation of proper liferent) of the Act from the ambit of the provision is to prevent rectification taking place following a normal transfer of ownership or creation of a liferent. Paragraph (b) also provides that the Keeper will not be able to enter or reinstate a real burden in the Land Register which he has omitted to include or has removed because he erroneously considered it to have been extinguished on feudal abolition. Section 12(3) of the 1979 Act sets out various circumstances in which no entitlement to indemnity arises and paragraph (c) adds to those circumstances the case where the loss arises in consequence of a rectification of or an omission to rectify an inaccuracy which has arisen due to the abolition of the feudal system. Indemnity is excluded not only where there is a proprietor in possession, but also where there is no proprietor in possession.