



Abolition of Feudal Tenure etc. (Scotland) Act 2000

2000 asp 5

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.

Subordinate Legislation Made

P1 S. 71 power fully exercised: 28.11.2004 appointed by S.S.I. 2003/456, art. 2

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 [^{F1}before that day];

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- (b) in an enactment contained in subordinate legislation made [^{F1} before that day];
- (c) in a document executed [^{F1} before that day] [^{F3}, ^{F4} ...
- (d) in the Land Register of Scotland or in—
 - (i) a land certificate;
 - (ii) a charge certificate; or
 - (iii) an office copy,
 issued, whether or not before that day, under the Land Registration (Scotland) Act 1979 (c. 33), [^{F5} or
- (e) in an extract or certified copy issued under section 104 of the Land Registration etc. (Scotland) Act 2012 (asp 5),]

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

[^{F6}(a)] in any document executed before that day [^{F7} or]

[^{F7}(b)] in the Land Register of Scotland or in any certificate or copy such as is mentioned in [^{F8} paragraph (d) of, or extract or certified copy such as is mentioned in paragraph (e) of, subsection (1)] above (whenever issued),]

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, [^{F9} 18A, 18B, 18C, 19, 20, 28, 28A or 60 of this Act or section 56 of the Title Conditions (Scotland) Act 2003 (asp 9) (facility burdens and service burdens)], to enforce on and after that day, be construed as a reference to that person.

[^{F10}(2A) In construing, after the appointed day and in relation to a right enforceable on or after that day, a document, or entry in the Land Register, which—

- (a) sets out the terms of a real burden; and
- (b) is not a document or entry references in which require to be construed as mentioned in subsection (2) above,

any provision of the document or entry to the effect that a person other than the person entitled to enforce the burden may waive compliance with, or mitigate or otherwise vary a condition of, the burden shall be disregarded.]

(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—

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- (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).

Textual Amendments

- F1** Words in s. 73(1)(a)(b)(c) inserted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **sch. 13 para. 13(a)(i)** (with ss. 119, 121)
- F2** Word in s. 73(1)(b) repealed (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **sch. 13 para. 13(a)(ii)** (with ss. 119, 121)
- F3** Words in s. 73(1) substituted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **sch. 13 para. 13(a)(iii)** (with ss. 119, 121)
- F4** Word in s. 73(1) repealed (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **Sch. 5 para. 39(8)(a)(i)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F5** S. 73(1)(e) and word inserted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **Sch. 5 para. 39(8)(a)(ii)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F6** Words in s. 73(2) renumbered (4.4.2003) as s. 73(2)(a) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3) {sch. 13 para. 13(b)(i)}, (with ss. 119, 121)
- F7** S. 73(2)(b) and preceding word inserted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3) {sch. 13 para. 13(b)(ii)}, (with ss. 119, 121)
- F8** Words in s. 73(2)(b) substituted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **Sch. 5 para. 39(8)(b)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F9** Words in s. 73(2) substituted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3) {sch. 13 para. 13(b)(iii)}, (with ss. 119, 121)
- F10** S. 73(2A) added (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3) {sch. 13 para. 13(c)}, (with ss. 119, 121)

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

- [^{F11}(1)] 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).
- [^{F12}(2) In construing the expression “parties to the grant” in subsection (1) above, any enactment or rule of law whereby investiture is deemed renewed when the parties change shall be disregarded.]

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Textual Amendments

- F11** S. 75 renumbered (4.4.2003) as s. 75(1) by [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#), **ss. 114(6), 129(3)** {sch. 13 para. 14}, (with ss. 119, 121)
- F12** S. 75(2) added (4.4.2003) by [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#), **ss. 114(6), 129(3)** {sch. 13 para. 14}, (with ss. 119, 121)

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.

Commencement Information

- II** S. 76 wholly in force (except insofar as relating to previously repealed provisions of Sch. 12) at 28.11.2004; s. 76(3)(4) fully in force and s. 76(1) in force for certain purposes at Royal Assent, see s. 77(1)(b)(2)(4); s. 76(2) fully in force and s. 76(1) in force for remaining purposes (except insofar as relating to previously repealed provisions of Sch. 12) at 28.11.2004 by s. 71, [S.S.I. 2003/456](#), **art. 2**

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) ^{F13} . . . There shall come into force on the appointed day—
 - (a) sections 1 and 2, 4 to 13, ^{F14} . . . 35 to 37, 46, 50 and 51, 54 to 57, 59 to 61, [^{F15}64, 65,] 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 [^{F16}, 47 to 49, 63 and 65A];

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(b) schedules 5 to 11;

(c) ^{F17}

(d) ^{F17}

and different days may be so appointed for different provisions; ^{F18}

Subordinate Legislation Made

P2 S. 77(4) power partly exercised: 1.11.2003 appointed for specified provisions by S.S.I. 2003/455, **art. 2**

P3 S. 77(4) power partly exercised: 28.11.2004 appointed for s. 63 by S.S.I. 2003/620, **art. 2**

Textual Amendments

F13 Words in s. 77(2) repealed (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 128(2), 129(5)(b)(c), **sch. 15** (with ss. 119, 121)

F14 Words in s. 77(2)(a) omitted (22.10.2003) by virtue of The Title Conditions (Scotland) Act 2003 (Consequential Provisions) Order 2003 (S.S.I. 2003/503), art. 2, **sch. 1 para. 5**

F15 Words in s. 77(2)(a) substituted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **sch. 13 para. 15(a)** (with ss. 119, 121)

F16 Words in s. 77(4)(a) substituted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **sch. 13 para. 15(b)** (with ss. 119, 121)

F17 S. 77(4)(c)(d) repealed (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 128(2), 129(5)(b)(c), **sch. 15** (with ss. 119, 121)

F18 Words in s. 77(4) repealed (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 128(2), 129(5)(b)(c), **sch. 15** (with ss. 119, 121)

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