

TITLE CONDITIONS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

BACKGROUND

3. The first part of the Executive's programme of property law reform, the Abolition of Feudal Tenure etc. (Scotland) Act (the "2000 Act"), received Royal Assent on 9 June 2000. The 2000 Act will abolish 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. Land previously held feudally will be owned outright. Superiority interests will disappear.
4. The abolition of feudal tenure will have a profound effect on the way in which property is held in Scotland. The vast majority of land is held at present under feudal tenure and many real burdens were created in feudal deeds. Together with the second Act in the programme of property law reform, the Title Conditions (Scotland) Act 2003, the 2000 Act will provide a modern and simplified framework for property ownership in Scotland.
5. Most feudal burdens (i.e. obligations in title deeds to perform a particular act such as to maintain a common facility or a prohibition not to do a specific thing) will cease to be enforceable by superiors. The rights of enforcement of third parties, for example other proprietors in the same housing estate or tenement whose properties are protected by the same burdens, will not be affected. In most cases, however, the superior's right to enforce burdens will be ended. The feudal burdens that survive abolition will be converted into ordinary, non-feudal burdens. As a result, there is a close interaction between the 2000 Act and the Title Conditions (Scotland) Act.
6. 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 in ordinary dispositions. These non-feudal real burdens will not be affected by abolition of the feudal system. The Title Conditions (Scotland) Act will reform the general law on all real burdens for the future and for all existing burdens, whether or not they were always non-feudal ordinary burdens or have survived feudal abolition by conversion into ordinary real burdens.
7. Although the 2000 Act has been passed, much of it has not yet been commenced. Feudal burdens will disappear along with the feudal system, but the 2000 Act allows some feudal burdens to be converted into ordinary burdens. They will be assimilated into the law of real burdens, and it is desirable that this assimilation forms a single process along with the reform of the law on title conditions. Most of the Title Conditions (Scotland) Act and the remaining parts of the 2000 Act will be commenced simultaneously on a date which is referred to as the **appointed day**. This will result in a significant clarification of the law. Time is required for transitional arrangements to be put in place, and the Deputy First Minister, Mr Jim Wallace, announced on 21 November 2002 the Executive's intention for the appointed day to fall on 28 November 2004.