Conveyancing and Feudal Reform (Scotland) Act 1970

1970 CHAPTER 35

PART I

FEUDAL REFORM

Variation and discharge of land obligations

1 Variation and discharge of land obligations

(1) The provisions of this section and of section 2 of this Act shall, without prejudice to any other method of variation or discharge, apply for the variation or discharge of any land obligation, however constituted, and whether subsisting at the commencement of this Act or constituted thereafter:

Provided that the provisions of the said sections shall not apply in relation to an obligation specified or referred to in Schedule 1 to this Act.

(2) For the purposes of this section and of section 2 of this Act, a land obligation is an obligation relating to land which is enforceable by a proprietor of an interest in land, by virtue of his being such proprietor, and which is binding upon a proprietor of another interest in that land, or of an interest in other land, by virtue of his being such proprietor.

For the purposes mentioned in this subsection, an obligation includes a future or contingent obligation, an obligation to defray or contribute towards some cost, an obligation to refrain from doing something, and an obligation to permit or suffer something to be done or maintained.

(3) Subject to the provisions of this section and of section 2 of this Act, the Lands Tribunal, on the application of any person who, in relation to a land obligation, is a burdened proprietor, may from time to time by order vary or discharge the obligation wholly or
partially in relation to the interest in land in respect of which the application is made, on being satisfied that in all the circumstances,

(a) by reason of changes in the character of the land affected by the obligation or of the neighbourhood thereof or other circumstances which the Tribunal may deem material, the obligation is or has become unreasonable or inappropriate; or

(b) the obligation is unduly burdensome compared with any benefit resulting or which would result from its performance; or

(c) the existence of the obligation impedes some reasonable use of the land.

(4) An order varying or discharging a land obligation under this section may direct the applicant to pay, to any person who in relation to that obligation is a benefited proprietor, such sum as the Lands Tribunal may think it just to award under one, but not both, of the following heads—

(i) a sum to compensate for any substantial loss or disadvantage suffered by the proprietor as such benefited proprietor in consequence of the variation or discharge; or

(ii) a sum to make up for any effect which the obligation produced, at the time when it was imposed, in reducing the consideration then paid or made payable for the interest in land affected by it;

but the Tribunal may refuse to vary or discharge a land obligation on the ground specified in subsection (3)(c) of this section if they are of the opinion that, due to exceptional circumstances related to amenity or otherwise, money would not be an adequate compensation for any loss or disadvantage which a benefited proprietor would suffer from the variation or discharge.

(5) The power conferred by this section to vary or discharge an obligation includes power to add or substitute any such provision (not being an award of money otherwise than by way of compensation under subsection (4) of this section) as appears to the Lands Tribunal to be reasonable as the result of the variation or discharge of the obligation and as may be accepted by the applicant; and the Tribunal may accordingly refuse to vary or discharge the obligation without some such provision.

(6) On the taking effect of an order under this section varying or discharging to any extent a land obligation, any irritant or resolutive clause or other condition relating to the enforcement of the obligation shall, in relation to any act or omission occurring after the date of such taking effect, be effective (if at all) only in so far as it would have been effective if the obligation had to that extent been varied or discharged by the person entitled to enforce the obligation; and any such added or substituted provision as is referred to in subsection (5) of this section shall be enforceable in the same manner as the obligation to the variation or discharge of which it relates.

2 Provisions supplementary to section 1

(1) On an application under section 1 of this Act, the Lands Tribunal shall give such notice thereof, whether by way of advertisement or otherwise, as may be prescribed, to the persons who, in relation to the obligation which is the subject of the application, appear to them to be either benefited or burdened proprietors, and to such other person as the Tribunal may think fit.

(2) In an application to the Lands Tribunal under section 1 of this Act, any person who, in relation to the obligation which is the subject of the application, is either a burdened or a benefited proprietor, shall be entitled, within such time as may be prescribed, to
oppose or make representations in relation to the application, and the Tribunal shall allow any such person, and may allow any other person who appears to them to be affected by the obligation or by its proposed variation or discharge, to be heard in relation to the application.

(3) An order made under section 1 of this Act shall take effect in accordance with such rules as may be prescribed.

(4) Where an order made under section 1 of this Act which has taken effect is duly recorded, it shall be binding on all persons having interest.

(5) Where a land obligation is first created, whether before or after the commencement of this Act, in a conveyance, deed, instrument or writing, no application shall be brought under section 1 of this Act in relation thereto until the expiry of two years after the date of its creation.

(6) For the purposes of this section and of section 1 of this Act,

"benefited proprietor", in relation to a land obligation, means a proprietor of an interest in land who is entitled, by virtue of his being such proprietor, to enforce the obligation; and "burdened proprietor", in relation to such an obligation, means a proprietor of an interest in land upon whom, by virtue of his being such proprietor, the obligation is binding; and—

(i) the benefited proprietor or the burdened proprietor of an interest in land held by two or more persons jointly or in common means either all those persons or any of them;

(ii) the benefited proprietor or the burdened proprietor of an interest in land which is subject to a heritable security constituted by ex facie absolute disposition or assignation includes the person who, if the debt were discharged, would be entitled to be vested in that interest;

"interest in land" means any estate or interest in land which is capable of being owned or held as a separate interest and to which a title may be recorded in the Register of Sasines;

"land obligation" has the meaning assigned to it in section 1(2) of this Act.

(7) Section 189 of the Housing (Scotland) Act 1966 (power of sheriff to authorise conversion of house into separate dwellings) shall cease to have effect.

Allocation of feuduties, etc.

3 Allocation of feuduties

(1) The provisions of this section and of sections 4 and 5 of this Act shall, without prejudice to any other method of allocation, apply for the purpose of allocating any cumulo feuduty, whether constituted before or after the commencement of this Act.

(2) For the purposes of this section and of sections 4 and 5 of this Act,

"cumulo feuduty" means the whole of a feuduty which at any given time is exigible in respect of land consisting of two or more parts held by separate proprietors, being a feuduty which at that time has not been allocated upon those parts by the superior or under this Act;

"feu" means the whole land burdened with a cumulo feuduty; and

"land" has the meaning assigned to it in section 3 of the Conveyancing (Scotland) Act 1874.
(3) Any proprietor of part of a feu may serve upon his superior or upon any other person to whom the *cumulo* feuduty is paid on his behalf a notice of allocation of the portion of the *cumulo* feuduty which has been apportioned by disposition or other document or by any other method (formal or informal) on the part of the feu of which he is proprietor.

(4) A notice of allocation shall be in, or as nearly as may be in, such form as may be prescribed by regulations made by the Secretary of State by statutory instrument, and shall contain—

(a) the name and address of the proprietor serving the notice and a sufficient identification of the part of the feu of which he is proprietor and on which he wishes the portion of the *cumulo* feuduty to be allocated, and the name and address of the person to whom that portion is paid;

(b) a statement of the amount of that portion;

(c) a statement to the effect that that portion of the feuduty is to be allocated under the Conveyancing and Feudal Reform (Scotland) Act 1970 on the part of the feu of which the person serving the notice is the proprietor; and shall be signed by the proprietor or his agent.

(5) Subject to the provisions of sections 4 and 5 of this Act, a notice of allocation shall be effective to allocate on the part of the feu of which the person serving the notice is the proprietor the portion of the *cumulo* feuduty stated in the notice.

4 Applications to Lands Tribunal regarding allocation of feuduties

(1) If a superior upon whom a notice of allocation has been served under section 3 of this Act wishes to object to the amount of the portion of feuduty of which allocation is sought by the proprietor serving the notice, he may, within such time as may be prescribed, apply to the Lands Tribunal, and on such application, the Tribunal (except in so far as they consider it impracticable to do so) shall by order allocate the *cumulo* feuduty, in such manner as they consider reasonable, on the part of the feu of which the person serving the notice is the proprietor, and on every other part of the feu which is held by a separate proprietor.

(2) On any application to the Lands Tribunal under this section, the Tribunal shall give such notice thereof, whether by way of advertisement or otherwise, as may be prescribed, to the persons who appear to them to be proprietors of parts of the feu in respect of which the *cumulo* feuduty is exigible, and to such other persons as the Tribunal may think fit; and the Tribunal shall allow the superior of the feu and any such proprietor, and may allow any other person who appears to them to have an interest in the application, to be heard in relation thereto.

5 Provisions supplementary to sections 3 and 4

(1) Where, under the provisions of this Act, a portion of a *cumulo* feuduty has been allocated on a part of a feu, that part of the feu shall, in relation to the rights and obligations of the proprietors of the remainder of the feu relating to payment of the remainder of the feuduty, be treated as if it had never been part of the feu and as if the portion of the feuduty allocated on it had never formed part of the *cumulo* feuduty.

(2) Nothing in section 4 of this Act shall empower the Lands Tribunal to make an order which would result in any alteration of the total amount of feuduty exigible in respect
of the feu which, before the making of the order, was burdened with the *cumulo* feuduty allocated by the order.

(3) An order of the Lands Tribunal under section 4 of this Act allocating the whole of the *cumulo* feuduty to which the order relates shall supersede for all purposes any existing apportionment of that feuduty.

(4) Where an application is made to the Lands Tribunal under section 4 of this Act in respect of a notice relating to a *cumulo* feuduty, any notice of allocation relating to that feuduty shall be of no effect.

(5) Subject to the provisions of this section, an allocation of feuduty effected under section 3 or 4 of this Act shall take effect as respects the amount of the feuduty so allocated which becomes exigible at any term occurring not less than 3 months after the service of the notice of allocation or (in the case of an allocation effected by order of the Lands Tribunal) after the date of the order, as if it were effected by a duly recorded memorandum of allocation under the law in force before the commencement of this Act.

(6) In any proceedings, the production of a document purporting to be a copy of a notice of allocation together with a registered post or recorded delivery service receipt addressed to the superior shall be sufficient evidence of the fact and date of service of the notice; and any such copy shall be taken to be a true copy unless the contrary is shown.

(7) For the purposes of this section and of sections 3 and 4 of this Act,

- "notice of allocation" means a notice under section 3 of this Act;
- "proprietor", in relation to a part of a feu, includes a person having right to that part but whose title thereto is not complete, and includes a person who is obliged to relieve the proprietor of liability for payment of the whole or part of the *cumulo* feuduty burdening that feu;
- "superior", in relation to a feu, means the immediate superior, and includes a person having right to a superiority but whose title thereto is not complete.

6 Allocation of ground annuals

The provisions of sections 3 to 5 of this Act shall apply in relation to a ground annual as they apply in relation to a feu, and for the purposes of such application—

- "*cumulo* feuduty" and "feu" shall be construed accordingly; and
- "superior" means the creditor in the ground annual.

Provisions for contracting out of sections 1 to 6 to be void

7 Provisions for contracting out of sections 1 to 6 void

Any agreement or other provision, however constituted, shall be void in so far as it purports to exclude or limit the operation of any enactment contained in sections 1 to 6 of this Act.
8 Reduction of period of possession necessary for prescription following on title and possession from 20 years to 10 years

(1) Section 16 of the Conveyancing (Scotland) Act 1924 (prescription following on title and possession) shall have effect, except in relation to any claim as against the Crown to the ownership of any foreshore or salmon fishings, with the substitution for the references to 20 years of references to 10 years.

(2) The provisions of subsection (1) of this section shall not be pleasurable to any effect in any action in dependence at the commencement of this Act, or in any action which shall be commenced prior to the day occurring on the expiry of 2 years from and after such commencement (hereafter in this section referred to as "the appointed day").

(3) For the purposes of the said section 16, as amended by this section, possession for any space of time prior to the appointed day shall not have effect unless such space of time immediately preceded and was continuous up to that day.