



Land Tenure Reform (Scotland) Act 1974

1974 CHAPTER 38

PART I

PROHIBITION OF FUTURE FEUDUTIES, AND REDEMPTION OF FEUDUTIES, ETC

1 Prohibition of new feuduties

- (1) No deed executed after the commencement of this Act shall impose feuduty; but a deed executed after that date which contains a grant of land in feu shall have effect otherwise as if the grant were subject to a feuduty.
- (2) A provision in a deed executed after such commencement which purports to impose feuduty shall not render the deed void or unenforceable, but the deed, if it contains a grant of land in feu, shall be subject to the provisions of subsection (1) above.

2 Prohibition of new ground annuals and other periodical payments from land

- (1) No deed executed after the commencement of this Act shall impose ground annual, skat or any other periodical payment (other than feuduty) in respect of the tenure or use of land or under a land obligation, not being a payment in respect of a lease, liferent or other right of occupancy, a payment of teind, stipend or standard charge, a payment in defrayal of or contribution towards some continuing cost related to the land, or a payment under a heritable security.
- (2) A provision in a deed executed after such commencement which purports to impose any payment to which subsection (1) above applies shall not render the deed void or unenforceable, but the deed shall have effect only to the extent (if any) that it would have had effect under the law in force before such commencement if it had not imposed any such payment.

3 Charters of novodamus, etc.

- (1) The feuduty under a charter of novodamus or other deed having equivalent effect executed after the commencement of this Act may be of any amount which does not

have the effect of increasing the total amount of feuduty exigible in respect of any land ; and any provision in any such deed which produces that effect shall to that extent be void and unenforceable: Provided that, where any provisions relating to two or more feuduties, contained in such a deed or in two or more such deeds executed on the same day, have the effect cumulatively of increasing the total amount of feuduty exigible in respect of any land, they shall, to the extent that they have the effect of altering the amount or incidence of that feuduty, be void and unenforceable.

- (2) This section shall apply, subject to any necessary modifications, to payments to which section 2 of this Act applies, as it applies to feuduties.

4 Right to redeem feuduty, ground annual, etc. on a term day

- (1) Subject to the provisions of this section and of any agreement in relation to the redemption of feuduty made before the commencement of this Act, and without prejudice to any existing method of redemption, any proprietor of a feu may, at any term of Whitsunday or Martinmas, redeem the feuduty which, as at the date of the notice aftermentioned, is exigible in respect thereof.
- (2) A proprietor who wishes to redeem a feuduty in terms of this section shall, not later than the term of redemption,
- (a) give to the superior or his agent a notice of redemption in or as nearly as may be in the form contained in Form 1 of Schedule 1 to this Act, and
 - (b) pay to or for behoof of the superior such a sum of money as would, if invested in 2 ½ per cent. Consolidated Stock at the middle market price at the close of business last preceding the date occurring one month before the said term, produce an annual sum equal to the feuduty (hereinafter in this section referred to as " the redemption money "), and also any amount of feuduty unpaid in respect of the feu, liability for which has accrued up to and including that term, and any interest or other payment exigible in respect of the feuduty last mentioned.
- (3) After due notice and payment in accordance with the foregoing provisions of this section, the feuduty shall, at the said term, be redeemed, and no payment shall be exigible in respect of the feuduty so redeemed for any period after such redemption ; but the feu shall continue in force otherwise as if the feuduty were not redeemed.
- (4) On redemption of feuduty in terms of this section, the superior or his agent shall, at the expense of the superior, grant a receipt in or as nearly as may be in the form contained in Form 2 of Schedule 1 to this Act.
- (5) The redemption of feuduty in terms of this section shall be binding on all persons having interest: Provided that such redemption shall not prejudice the rights of existing heritable creditors who are not parties thereto, but the superior shall be liable to indemnify any proprietor of the feu against liability arising after such redemption from such rights.
- (6) Where the interest of the superior in a feuduty which is redeemed in terms of this section is subject to any trust, liferent or entail, the redemption money shall be treated for all purposes as capital money.
- (7) For the purposes of this section " feuduty " includes any *cumulo* feuduty which is unallocated and any part of a *cumulo* feuduty which has been allocated, and includes any payment (whether unallocated or allocated as aforesaid) of ground annual, skat or any other perpetual periodical payment in respect of the tenure, occupancy or use

of land or under a land obligation, not being a payment of teind, stipend or standard charge, or in defrayal of or contribution towards some continuing cost related to the land, or under a heritable security; and this section, in its application to any payment to which it is extended under this subsection, shall have effect subject to any necessary modifications.

5 Redemption by law of feuduty, ground annual, etc. on transfer of land for valuable consideration

- (1) Subject to any agreement made before the commencement of this Act in relation to the redemption of the feuduty exigible in respect of a feu and to subsection (2) below, on the date when entry is taken under an obligation to grant a conveyance of the feu for valuable consideration or under the deed containing such a conveyance (the said date being hereinafter in this section, subject to subsection (2) below, referred to as "the date of redemption"), the feuduty exigible as at the date of redemption shall be deemed to have been redeemed: Provided that this section shall not apply in any case where the date of the obligation to grant a conveyance or of the execution of the deed occurred before the commencement of this Act.
- (2) Where the date (whether before or after the commencement of this Act) when entry is taken, as specified in subsection (1) above, is earlier than the date of the obligation there specified or (where there was no such obligation) the execution of the deed there specified, the date of redemption shall be the date of the said obligation or execution as the case may be.
- (3) No payment shall be exigible in respect of a feuduty for any period after the date of redemption thereof; but the feu shall continue in force otherwise as if the feuduty were not redeemed.
- (4) On the date of redemption, there shall be payable to the superior by the person who was the proprietor of the feu immediately before the date of the obligation specified in subsection (1) above or (where there was no such obligation) the execution of the deed there specified, or by his representatives, such a sum of money (hereinafter in this section referred to as "the redemption money") as would, if invested in 2£ per cent. Consolidated Stock at the middle market price at the close of business last preceding the date occurring one month before the date of redemption, produce an annual sum equal to the feuduty.
- (5) Subject to the provisions of subsections (6) to (8) below, at and after the date of redemption, the redemption money, if it has not been paid to the superior, shall, together with interest thereon from the date of redemption until payment at such rate or rates as may be determined, be secured in favour of the superior, as a real burden on the land subject to the feu, binding on the proprietor of the feu for the time being, in the same manner and subject to the same remedies as the feuduty redeemed.
- (6) At any time after the date of the obligation specified in subsection (1) above or (where there was no such obligation) after the date of execution of the deed there specified, the proprietor of the feu for the time being or his agent may give to the superior or his agent a notice of redemption in or as nearly as may be in the form contained in Schedule 2 to this Act; and, subject to subsections (7) and (8) below, at the expiry of the period of two months after the giving of such notice or after the date of redemption, whichever is later, the land subject to the feu shall cease to be burdened by the unpaid redemption money and interest referred to in subsection (5) above, and by any feuduty unpaid in respect of the feu, liability for which has accrued up to and including the date

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of redemption, and any interest or other payment exigible in respect of that feuduty, and thereafter (subject to the said subsections (7) and (8)) no action shall lie against any person in respect of any sum specified in this subsection, other than—

- (a) in the case of the redemption money or interest thereon, against the person who was the proprietor of the feu immediately before the date of the said obligation or of the execution of the said deed, as the case may be, or against his representatives ;
 - (b) in the case of the said unpaid feuduty or interest or other payment relative thereto, against any person who was liable therefor immediately before the date of redemption, or against his representatives.
- (7) If, before the end of the relevant period of two months specified in subsection (6) above, the superior has obtained warrant to cite the defender in an action against any person mentioned in paragraph (a) or (b) thereof or his representatives for the recovery of any sum for which that person remains liable in terms of those paragraphs, the court may at any time within the said period (whether or not the defender has been cited in the action) order that the land subject to the feu shall, in respect of that sum, continue to be burdened, and that the sum shall continue to be exigible, as specified in subsection (5) above, for such additional period (which the court may by further order extend from time to time if necessary) as is reasonable to enable the superior to recover the said sum; but the superior shall not be entitled to recover any such sum from or at the expense of any person whose liability therefor arose at or after the date specified in relation to such sum in the said paragraph (a) or (b), unless the court is satisfied that it is not reasonably practicable to recover such sum from any person who remains liable therefor in terms of that paragraph.
- (8) No order under subsection (7) above shall have effect unless an extract thereof has been recorded in the Register of Sasines before the expiry of the relevant period of two months referred to in that subsection or before the expiry of any such existing order.
- (9) On receipt of a notice of redemption in terms of subsection (6) above in duplicate, the superior or his agent shall, at the expense of the superior, if so requested return one copy with an acknowledgement thereon subscribed by him.
- (10) The deemed redemption of feuduty in accordance with this section shall be binding on all persons having interest: Provided that such redemption shall not prejudice the rights of existing heritable creditors, but the superior shall be liable to indemnify any proprietor of the feu against liability arising after the date of redemption from such rights.
- (11) For the avoidance of doubt, it is hereby declared that this section shall have effect whether or not the obligation to grant a conveyance as aforesaid has been implemented.
- (12) Subsections (6) and (7) of section 4 of this Act shall apply in relation to this section as they apply in relation to that section, with the addition in subsection (7), after the words " ground annual", of the words " standard charge ", and the substitution, for the words " stipend or standard charge " , of the words " or stipend "; but in this section " feu " does not include any part of a feu which is subject to a *cumulo* feuduty, no portion of which has been allocated on that part.
- (13) This section shall not apply in any case specified in subsection (1) of section 6 of this Act except to the extent (and subject to the modifications) specified in that section.

6 Redemption by law of feuduty, ground annual, etc. on acquisition of land by authority possessing compulsory purchase powers

- (1) Subject to subsection (4) below, and notwithstanding the provisions of section 107 of the Lands Clauses Consolidation (Scotland) Act 1845, this section shall have effect in relation to the case of the redemption of the feuduty exigible in respect of a feu to which entry is taken (whether or not there is an obligation to pay valuable consideration therefor) by an authority possessing compulsory purchase powers (hereinafter in this section referred to as " the acquiring authority "); and the enactments relating to the acquisition of land by such an authority shall for the purposes of this section apply accordingly as they apply in relation to acquisition by purchase.
- (2) The following provisions of section 5 of this Act shall apply for the purposes of this section as they apply for the purposes of that section:
 - (a) section 5(1) and (2) shall apply, with the omission in the said subsection (1) of the reference to valuable consideration ; and for the purposes of such application the references in the said subsections to an obligation to grant a conveyance shall include references to a notice to treat or deemed notice to treat under section 17 of the said Act of 1845 or under any other enactment having similar effect;
 - (b) section 5(3) shall apply, subject to any of the provisions of the Lands Clauses Acts or of the Railway Clauses Consolidation (Scotland) Act 1845 which apply to the case;
 - (c) notwithstanding the provisions of section 20 of the Land Compensation (Scotland) Act 1963, section 5(4) shall apply, with the substitution, for the reference to the person who was the proprietor of the feu immediately before the date of the obligation or (as the case may be) the execution of the deed there referred to and to his representatives, of a reference to the acquiring authority;
 - (d) section 5(10) and (11) shall apply.
- (3) Sections 109 and 111 of the Lands Clauses Consolidation (Scotland) Act 1845 (which relate to the discharge of land from feuduty, etc, and the apportionment and continuance of the charge for such payments on land not taken) shall apply in relation to the redemption of feuduty under this section (whether the land subject to the feuduty is acquired compulsorily or by agreement) as they apply in relation to the discharge of charges under that Act.
- (4) The foregoing provisions of this section shall not apply in relation to the acquisition of land by means of a general vesting declaration within the meaning of Schedule 24 to the Town and Country Planning (Scotland) Act 1972; but section 5(4) of this Act shall, notwithstanding the provisions of section 20 of the Land Compensation (Scotland) Act 1963, apply in relation to such acquisition as it applies in relation to the acquisition of land to which the said section 5 applies, with the substitution, for the reference to the person who was the proprietor of the feu immediately before the date of the obligation or (as the case may be) the execution of the deed there referred to and to his representatives, of a reference to the acquiring authority; and in such a case the date of redemption means the date of vesting of the land in the acquiring authority under paragraph 7 of the said Schedule.
- (5) In every case to which, by virtue of subsection (1) or (4) above, this section applies, the acquiring authority shall—
 - (a) not later than the date of redemption, give to the superior or his agent a notice of redemption in or as nearly as may be in the form contained in Schedule 3 to this Act; and

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- (b) be liable to pay to the superior interest on the redemption money from the date of redemption until payment at such rate or rates as may be determined.
- (6) Where the interest of the superior in a feuduty which is redeemed in terms of this section is subject to any trust, liferent or entail, the redemption money shall be treated for all purposes as capital money.
- (7) In this section,
 - " authority possessing compulsory purchase powers " has the same meaning as is conferred by section 275(1) of the Town and Country Planning (Scotland) Act 1972;
 - " feuduty ", in any case where part only of a feu subject to a *cumulo* feuduty is acquired, means such portion of the feuduty (if any) as may be settled thereon under section 109 of the Lands Clauses Consolidation (Scotland) Act 1845 as applied by this section or, in the case specified in subsection (4) above, by paragraph 32 of the said Schedule 24; and includes any payment (or any such portion thereof, as the case may be) of ground annual, standard charge, skat or any other perpetual periodical payment in respect of the tenure, occupancy or use of land or under a land obligation, not being a payment of teind or stipend, or in defrayal of or contribution towards some continuing cost related to the land, or under a heritable security; and this section, in its application to any payment to which it is extended under this subsection, shall have effect subject to any necessary modifications.

7 Transitional and supplementary provisions relative to Part I

- (1) A deed executed after the commencement of this Act and before 8th November 1975 shall not be subject to the provisions of section 1, 2 or 3 of this Act if—
 - (a) the deed is granted in implement of an obligation entered into before 8th November 1973 by the person who, when the obligation was entered into, was the proprietor of the land subject to the deed ; and
 - (b) there is included in the deed or in a memorandum endorsed thereon a statement to that effect by or on behalf of the grantor of the deed, in or as nearly as may be in the form contained in Schedule 4 to this Act.
- (2) Where a deed, containing a provision which to any extent is void or unenforceable by virtue of section 1, 2 or 3 of this Act, has been recorded in the Register of Sasines, the person who granted the deed or his successor may be required, by any person having an interest, to grant any appropriate corrective deed capable of being recorded in the Register.
- (3) In this Part of this Act, unless the context otherwise requires—
 - " feu " includes blench holding and " feuduty " includes blench duty;
 - " land obligation " has the meaning assigned to it in section 1(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970;
 - " proprietor ", in relation to land, includes a person having right to that land but whose title thereto is not complete, and, in the case of land subject to a heritable security constituted by *ex facie* absolute disposition, means the debtor in the security, except where the creditor is in possession of the land.