

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

# **ABOLITION OF FEUDAL TENURE ETC. (SCOTLAND) ACT 2000**

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## **EXPLANATORY NOTES**

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#### *Commentary on Sections*

#### **Part 2: Land Transfers Etc. on and after Appointed Day**

##### ***Section 4: Ownership of land***

30. *Section 4* restates, in non-feudal language, the established rules for the transfer of ownership of land.
31. *Subsection (1)* provides that ownership passes either on registration of an interest in land in the Land Register of Scotland following a registrable transfer of a property in a county which is operational under the Land Registration (Scotland) Act 1979, or in any other case, on the recording of the conveyance of the land in the Register of Sasines.
32. *Subsection (2)* follows section 3(2) of the Land Registration (Scotland) Act 1979 in saving any special rule of the common law or statute. The most important such rule in practice is that which states that when land is conveyed to A and B and the survivor, ownership of A's pro indiviso share passes automatically to B, in the event that A predeceases B without evacuating the destination i.e. making some other arrangement for what happens to the pro indiviso share after the person's death.

##### ***Section 5: Form of application for recording deed in Register of Sasines***

33. At present a deed which is to be recorded in the Register of Sasines must contain at its end a warrant for registration. In the Land Register, however, warrants of registration have been replaced by a statutory application form signed by or on behalf of the applicant. The application form is mandatory in terms of the Land Registration (Scotland) Rules 1980. Since April 1992, an application form has also been in use for the Register of Sasines in connection with computerisation of the presentment book, although it has no statutory basis and strictly cannot be insisted upon.
34. *Section 5* brings the Register of Sasines into line with the Land Register by removing the need for a warrant of registration. The warrant will be replaced with a new statutory application form to be prescribed by the Scottish Ministers in subordinate legislation. The subordinate legislation may also set out the procedure relating to applications for recording in the Register of Sasines.

##### ***Section 6: Deduction of title for unregistered land etc.***

35. *Section 6* deals with a gap in the existing law. Legislation on deduction of title takes for granted that there will always be a last recorded title. On rare occasions there will not be such a title. Examples of ownership without a recorded or registered title include corporations such as the University of St Andrews which acquired land before the

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Register of Sasines was set up in 1617. The purpose of section 6 is not to require deduction of title in every case where a deed is taken from a person who owns without a recorded title; rather it allows deduction of title from such a person in a case where deduction of title would otherwise be necessary. Once land is registered in the Land Register, deduction of title ceases to be required.