

ABOLITION OF FEUDAL TENURE ETC. (SCOTLAND) ACT 2000

EXPLANATORY NOTES

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Commentary on Sections

Part 4: Real Burdens

Section 37: Amount of compensation

143. *Subsection (1)* provides that the amount payable on any one claim is the amount of development value which would have accrued to the owner of the land if the burden had been modified so as to free the land for the development which has actually occurred. For example, if the burden prohibited all building and the owner, 7 years after the appointed date of abolition, has built a small shed, the compensation would only be the difference between the value of the land on the assumption that a shed could not be built and the value of the land on the assumption that a shed could be built. Building the shed would not trigger a claim for compensation based on the fact that a supermarket could be built.
144. *Subsection (2)* limits the total amount of compensation payable, on one or several claims, to such an amount as will make up for any effect which the burden produced at the time when it was imposed in reducing or eliminating the consideration paid by the vassal for the original feudal grant. This formula is derived from section 1(4)(ii) of the Conveyancing and Feudal Reform (Scotland) Act 1970. In relation to that provision, the practice of the Lands Tribunal for Scotland has been to make no allowance for inflation in the calculation of compensation. To leave inflation out automatically takes account of the age of burdens. Since the Lands Tribunal was given the power in 1970 to vary or discharge land obligations, it is now rare for feuing conditions alone to be used to protect the superior's interests in development value.
145. *Subsection (3)* is designed to prevent double compensation. The former superior may, for example, have a valid contractual claim against the former vassal if they are both the original parties to the contract. There would be no need for statutory compensation in such a case. *Paragraph (b)* stipulates that the assignee of a reserved right to claim compensation will not be able to recover more than the assignor would have been entitled to had there not been an assignation. The former superior may have contractual rights to recover the development value that are not passed on to the assignee. These contractual rights will still, however, be taken into account for the purposes of determining the amount of compensation due to the assignee.
146. *Subsection (4)* is designed to deal with the point that, in the case of an occurrence after the appointed date of abolition, the burden will already have been extinguished by section 17 (Extinction of superior's rights). The comparison is between what the land would have been worth if a burden had subsisted unmodified and what it would have

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

been worth if the burden had been modified to permit the development which has taken place.