

*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

EXPLANATORY NOTES

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Commentary on Sections

Part 7: General

Section 71: The appointed day

219. This section provides that the appointed day, which is the day when the feudal system is abolished and the main provisions of the Act come into effect, is to be fixed by the Scottish Ministers by order. They must choose a day at least 6 months after the order is made. The appointed day is to be either a Whitsunday (28 May) or a Martinmas (28 November) because those are the dates on which feuduty is normally payable. It is envisaged that the appointed day will be sufficiently long after the date when the Act is passed to give people time to make any necessary arrangements to adapt to the new law. For example, a former superior might wish to register a notice to convert a feudal burden into a neighbour burden or a notice reserving the right to claim compensation in respect of a development value burden. Time will obviously need to be allowed for this to be done. It should, however, be noted that it is envisaged that the Title Conditions (Scotland) Bill which is intended to be introduced by the Scottish Executive and which will complement the terms of this Act will be commenced on the same appointed day.

Section 72: Interpretation

220. This section defines "land" and is intended to include not only surface land (including land covered by water) and the buildings and other structures which are present on it, but also the separate legal rights which are capable of being held on feudal tenure under the present law. These include flats in tenement buildings, minerals under the ground, and the right to salmon fishings, as well as other more esoteric subjects. This definition avoids the risk that the feudal system will survive in relation to some anomalous type of property. The definition expressly includes land which was not actually held on feudal tenure but which because of its nature might have been (for example, ground owned under udal law).

Section 73: Feudal terms in enactments and documents: construction after abolition of feudal system

221. This section provides for the automatic translation of certain feudal terms which might be found in deeds or enactments dating from before the appointed date of abolition but having to be applied after that date. The translations will apply in so far as the context admits. The definition of "subordinate legislation" includes all subordinate legislation made by the Scottish Parliament whether under a Westminster Act or an Act of the Scottish Parliament.

Section 74: Orders, regulations and rules

222. This section regulates the procedure for orders, regulations or rules under the Act.
223. *Subsection (2)* provides that any consequential repeals or amendments pursuant to section 76(3) to primary legislation by subordinate legislation as a result of the Act must be made by affirmative procedure before the Scottish Parliament.

Section 75: Saving for contractual rights

224. Like other conveyances, feudal deeds contain contractual terms, such as warrandice or the conditions which, on registration, become real burdens. Such terms become enforceable immediately on acceptance of delivery of the deed, and thus before the superior/vassal relationship is constituted by registration. Section 54 makes clear that feudal abolition will extinguish (subject to exceptions) all rights and obligations of a superior which are held simply by virtue of being the superior. It is not, however, intended to extinguish contractual rights and obligations, whether created in feudal deeds or otherwise. *Section 75* makes it clear that, even after abolition, a former superior will be able to enforce the terms of a feudal deed against the original vassal insofar as such terms are contractual. As with other contracts, the rights can be assigned. The right to feuduty is expressly excluded, on the grounds that Part 3 of the Act already provides full compensation for its loss.

Section 76: Minor and consequential amendments, repeals and power to amend or repeal enactments

225. This section will give effect to the schedules of amendments and repeals. Because enactments made against the background of the feudal system extend over hundreds of years and cover disparate subjects, it is impossible to guarantee that all provisions containing feudal terminology or concepts have been discovered. The translation provision in section 73 should cover this possibility, but, as an added safeguard, power is given by *subsection (3)* to make further consequential amendments by order.

Section 77: Short title and commencement

226. *Subsection (2)* identifies the provisions which will come into force on the appointed day for abolition. Except as provided in this subsection and in subsection (4), the Act comes into force on Royal Assent (see subsection (1)).
227. *Subsection (3)* provides that an amendment made to the Conveyancing and Feudal Reform (Scotland) Act 1970 is to have retrospective effect. The amendment is in response to the decision of the First Division of the Court of Session in *Beneficial Bank plc v McConnachie* and is to the effect that the security subjects in a standard security need to be described only in such a manner that they can be identified.
228. *Subsection (4)* provides that the relevant provisions in Part 4 of the Act relating to real burdens will come into force on a day prescribed by Scottish Ministers.

Schedule 1

229. This is the form of notice (with appendix) referred to in section 8(2) for claiming compensation for the extinction of a cumulo feuduty. It contains instructions for completing the form, an explanatory note a copy of which must be served with the notice (see section 8(4)) and notes for the completion of the appendix.

Schedule 2

230. This is the form of notice referred to in section 8(3) for claiming compensation for the extinction of the feuduty which is not a cumulo feuduty. It contains instructions for completing the form and an explanatory note a copy of which must be served with the notice (see section 8(4)).

Schedule 3

231. This is the form of instalment document referred to in section 10(1) for use where compensation due for the extinction of the feuduty is £50 or more and thus qualifies for payment by instalments. It contains notes for completing the form and an explanatory note a copy of which must be served with the document.

Schedule 4

232. This schedule provides forms for use in connection with the service of notices requiring compensatory payments for the extinction of feuduty under section 8(1). Form A is an acknowledgement of receipt to be signed by the former vassal, while Form B is a certificate which, if accompanied by a postal receipt shall be sufficient evidence of due service where service is by recorded delivery or registered post.

Schedule 5

233. This is the form of notice referred to in section 18(1) for use by superiors who wish to convert feudal burdens to neighbour burdens. It contains an explanatory note and notes for completion of the notice.

Schedule 6

234. This is the form of notice referred to in section 19(1) for use by superiors who wish to enter into an agreement to convert feudal burdens into neighbour burdens. It contains an explanatory note and notes for completion of the notice.

Schedule 7

235. This is the form of notice referred to in section 20(3) for use by superiors who wish to apply to the Lands Tribunal to convert feudal burdens into neighbour burdens, having failed to reach agreement under section 19. It contains an explanatory note and notes for completion of the notice.

Schedule 8

236. This is the form of notice referred to in section 27(1) for use by superiors which are conservation bodies, or the Scottish Ministers, to convert feudal burdens to conservation burdens. It contains an explanatory note and notes for completion of the notice.

Schedule 9

237. This is the form of notice referred to in section 33(1) for use by superiors who wish to reserve the right to claim compensation for the loss of development value burdens. It contains an explanatory note and notes for completion of the notice.

Schedule 10

238. This schedule provides forms for use in connection with the service of notices claiming compensation in relation to a development value burden.

Schedule 11

239. This is the form of assignation, discharge or restriction of a reserved right to claim compensation for the loss of development value burdens.

Schedule 12Part 1

240. This schedule contains numerous consequential and conveyancing amendments. Many remove feudal terminology or replace it with non-feudal language. Part 1 of the schedule deals with amendments to public general statutes.

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Schedule 12Part 2

241. This part of the schedule contains consequential amendments to private Acts relating to the National Trust for Scotland.

Schedule 13

242. This schedule deals with the large number of repeals made necessary or possible as a result of the abolition of the feudal system and related reforms in the Act. It eliminates a great deal of obsolete legislation. Part 1 deals with repeals in general and Part 2 deals with private Acts relating to the National Trust for Scotland.