



# Abolition of Feudal Tenure etc. (Scotland) Act 2000

2000 asp 5

## PART 3

### FEUDUTIES

#### *Extinction of feuduties*

#### **7 Extinction on appointed day**

Without prejudice to section 13 of this Act, any feuduty which has not been extinguished before the appointed day is extinguished on that day; and accordingly no payment shall be exigible, in respect of feuduty, for that day or for any period after that day.

#### **8 Requiring compensatory payment**

- (1) Where a feuduty is extinguished by section 7 of this Act, the person who was the superior in relation to the feu (that person being in the following provisions of this Part of this Act referred to as the “former superior” may, within two years after the appointed day, duly serve on the person who was the vassal in relation to the feu (that person being in those provisions referred to as the “former vassal” notice requiring that a payment specified in the notice (being a payment calculated in accordance with section 9 of this Act) be made to him by the former vassal; and any such payment is referred to in this Act as a “compensatory payment”.
- (2) In its application to a feuduty which was, at extinction, a *cumulo* feuduty, subsection (1) above shall be construed as relating to separate notice being duly served on each former vassal from whom payment is sought; and in that application, notice under that subsection shall be in (or as nearly as may be in) the form, with its Appendix, contained in schedule 1 to this Act.
- (3) Except in the application mentioned in subsection (2) above, notice under subsection (1) above shall be in (or as nearly as may be in) the form contained in schedule 2 to this Act.

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- (4) To any notice served under subsection (1) above shall be attached a copy of the explanatory note which immediately follows, as the case may be—
- (a) the Appendix to the form in schedule 1; or
  - (b) the form in schedule 2,
- to this Act.
- (5) Subject to section 10 of this Act, if subsections (1) to (4) above are complied with, then within 56 days after due service on him a former vassal shall make the compensatory payment.
- (6) The reference in subsection (1) above to a notice being duly served shall be construed in accordance with section 11 of this Act.

## **9 Calculation of amount of compensatory payment**

- (1) In calculating the compensatory payment in respect of which notice may be served under section 8(1) of this Act, there shall first be determined the sum of money which would, if invested in two and a half per cent. Consolidated Stock at the middle market price at the close of business last preceding the appointed day, produce an annual sum equal to the feuduty.
- (2) Unless the feuduty was, at extinction, a *cumulo* feuduty the sum so determined shall be the compensatory payment.
- (3) If the feuduty was, at extinction, a *cumulo* feuduty the former superior shall, after determining that sum, allocate it among the former vassals in such proportions as are reasonable in all the circumstances; and an amount which is so allocated to a former vassal shall be the compensatory payment for that former vassal.
- (4) If the feuduty was, at extinction, a *cumulo* feuduty wholly or partly apportioned among the former vassals, then for the purposes of subsection (3) above the proportions of an allocation shall be presumed reasonable in so far as they accord with that apportionment.

## **10 Making compensatory payment by instalments**

- (1) Where notice under subsection (1) of section 8 of this Act requires from a former vassal a compensatory payment of not less than £50, the former superior shall serve with it a filled out document (in this section referred to as an “instalment document”, in (or as nearly as may be in) the form contained in schedule 3 to this Act, for signature and dating by the former vassal (there being appended to the document so sent a copy of the explanatory note which immediately follows that form in the schedule); and if the former superior does not do so then no requirement to make the compensatory payment shall arise under subsection (5) of that section by virtue of that notice.
- (2) Subject to subsection (3) below, a former vassal on whom an instalment document is served shall obtain the option of making the compensatory payment by instalments if (and only if)—
- (a) he signs, dates and returns the document within the period which (but for this section) is allowed for making that payment by section 8(5) of this Act; and
  - (b) when so returning the document, he pays to the former superior an amount equivalent to one tenth of the compensatory payment (being an amount thus

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payable in addition to the compensatory payment and irrespective of how or when the compensatory payment is subsequently made).

- (3) If on or after the date on which an instalment document is served on a former vassal he ceases by virtue of a sale, or transfer for valuable consideration, to have right to the land in respect of which the feuduty was payable or any part of that land (that land or any part of it being in this section referred to as (“the land” then—
  - (a) where he has obtained the option mentioned in subsection (2) above, he shall lose that option; and
  - (b) where he has not obtained that option, he shall lose the right to obtain it.
- (4) Where the option of making the compensatory payment by instalments is obtained, those instalments shall be equal instalments payable where—
  - (a) the compensatory payment is £500 or less, on each of the five;
  - (b) it is more than £500 but not more than £1,000, on each of the ten;
  - (c) it is more than £1,000 but not more than £1,500, on each of the fifteen; and
  - (d) it is more than £1,500, on each of the twenty,term days of Whitsunday or Martinmas which then next follow; except that—
  - (i) in a case where any such instalment remains unpaid for forty-two days after falling due, the outstanding balance of the entire compensatory payment shall immediately fall due;
  - (ii) in a case where, by virtue of subsection (3)(a) above, the option is lost, that outstanding balance shall fall due on the seventh day after the day on which the former vassal ceases to have right to the land; and
  - (iii) in any other case, the former vassal may pay that outstanding balance at any time.
- (5) In a case where, by virtue of subsection (3)(b) above, the right to obtain the option of making the compensatory payment by instalments is lost, section 8(5) of this Act shall apply accordingly.

## **11 Service under section 8(1)**

- (1) Due service under section 8(1) of this Act is effected by delivering the documents in question to the former vassal or by sending them by registered post, or the recorded delivery service, addressed to him at an appropriate place.
- (2) An acknowledgement, signed by the former vassal, which conforms to Form A of schedule 4 to this Act, or as the case may be a certificate which conforms to Form B of that schedule and is accompanied by the postal receipt, shall be sufficient evidence of such due service; and if the packet containing the documents in question is, under subsection (1) above, sent by post but is returned to the former superior with an intimation that it could not be delivered, the packet may be delivered or sent by post, with that intimation, to the Extractor of the Court of Session, the delivering or sending to the Extractor being taken to be equivalent to the service of those documents on the former vassal.
- (3) For the purposes of subsection (2) above, an acknowledgement of receipt by the Extractor on a copy of those documents shall be sufficient evidence of their receipt by him.

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- (4) The date on which notice under section 8(1) of this Act is served on a former vassal is the date of delivery, or as the case may be of posting, in compliance with subsection (1) or (2) above.
- (5) A reference in this section to an “appropriate place” is, for any former vassal, to be construed as a reference to—
- (a) his place of residence;
  - (b) his place of business; or
  - (c) a postal address which he ordinarily uses,
- or, if none of those is known at the time of delivery or posting, as a reference to whatever place is at that time his most recently known place of residence or place of business or postal address which he ordinarily used.

## 12 Extinction by prescription of requirement to make compensatory payment

In Schedule 1 to the Prescription and Limitation (Scotland) Act 1973 (c.52) (which specifies obligations affected by prescriptive periods of five years under section 6 of that Act)—

- (a) in paragraph 1, after sub-paragraph (a) there shall be inserted—
  - “(aa) to any obligation to make a compensatory payment (“compensatory payment” being construed in accordance with section 8(1) of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), including that section as read with section 56 of that Act);”;
- and
- (b) in paragraph 2(e), after the words “paragraph 1(a)” there shall be inserted “ or (aa) ”.

### *Arrears*

## 13 Arrears of feuduty etc.

- (1) Feuduty shall continue to be exigible for any period before the appointed day; and if (in so far as so exigible) it has not fallen due before that day, it shall fall due on that day.
- (2) On the appointed day feuduty shall cease to constitute a *debitum fundi* as shall any amount secured, in favour of a superior, by virtue of section 5 of the Land Tenure Reform (Scotland) Act 1974 (c.38) (redemption on transfer of land).
- (3) The superior’s hypothec is, on the appointed day, abolished.
- (4) Subsections (2) and (3) above are without prejudice to any—
  - (a) action—
    - (i) founded on a *debitum fundi* or superior’s hypothec; and
    - (ii) commenced before the appointed day; or
  - (b) right or preference—
    - (i) so founded; and
    - (ii) claimed in a sequestration, or in some other process in which there is ranking, commenced before that day.

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## *Disclosure*

### **14 Duty of collecting third party to disclose information**

For the purposes of section 8(1) of this Act, a superior (or, on or after the appointed day, a former superior) who receives, or has at any time received, from a third party an amount collected in respect of feuduty from and remitted to the superior (or former superior) on behalf of a vassal (or, on or after the appointed day, a former vassal) may require the third party to disclose the identity and address of the vassal (or former vassal) and, in the case of remission as a part of a feuduty, the amount so collected from the vassal (or former vassal); and the third party shall, in so far as it is practicable for him to do so, forthwith comply with that requirement.

### **15 Duty to disclose identity etc. of former vassal**

Where the former superior purports duly to serve notice under section 8(1) of this Act but the person on whom it is served, being a person who had right to the feu before the appointed day, is not the former vassal because, immediately before the appointed day, some other person and not he had right to the feu, he shall forthwith disclose to the former superior—

- (a) the identity and address of that other person; or
- (b) (if he cannot do that) such other information as he has which might enable the former superior to discover that identity and address.

## *Interpretation*

### **16 Interpretation of Part 3**

- (1) In this Part of this Act, unless the context otherwise requires—
  - “compensatory payment” shall be construed in accordance with section 8(1) of this Act;
  - “feuduty” includes blench duty;
  - “superior”, in relation to a feu, means the person who, immediately before the appointed day, has right to the immediate superiority, whether or not he has completed title (and if more than one person comes within that description, then the person who has most recently acquired such right); and “former superior” shall be construed in accordance with section 8(1) of this Act; and
  - “vassal”, in relation to a feu, means the person who, immediately before the appointed day, has right to the feu, whether or not he has completed title (and if more than one person comes within that description, then the person who has most recently acquired such right); and “former vassal” shall be construed in accordance with section 8(1) of this Act.
- (2) Where a feu comprises parts each held by a separate vassal, being parts upon which feuduty has not been allocated, the whole of any feuduty exigible in respect of the parts so held is in this Part of this Act referred to as a “*cumulo* feuduty”; and any reference in this Part of this Act to a feu is to be construed, in relation to the parts so held, as a reference to those parts collectively.
- (3) Any reference in this Part of this Act to a feu is to be construed as including a reference to any part of a feu if it is a part upon which feuduty has been allocated.

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- (4) Where, immediately before the appointed day a feu, or any part of a feu, is held by two or more vassals as common property—
- (a) they shall be severally liable to make any compensatory payment (but as between, or as the case may be among, themselves they shall be liable in the proportions in which they hold the feu); and
  - (b) subject to section 11 of this Act they shall together be treated for the purposes of this Act as being a single vassal.

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