



Abolition of Feudal Tenure etc. (Scotland) Act 2000

2000 asp 5

PART 4 **S**

REAL BURDENS

Compensation

33 Notice reserving right to claim compensation where land subject to development value burden **S**

(1) Where—

- (a) before the appointed day, land was feued subject to a real burden enforceable by a superior (or so enforceable if the person in question were to complete title to the *dominium directum*) which reserved for the superior the benefit (whether wholly or in part) of any development value of the land (such a real burden being referred to in this Part of this Act as a (“development value burden”); and

(b) either—

- (i) the consideration paid, or payable, under the grant in feu was significantly lower than it would have been had the feu not been subject to the real burden; or

- (ii) no consideration was paid, or payable, under the grant in feu,

the superior may, before that day, reserve the right to claim (in accordance with section 35 of this Act) compensation by executing and registering against the *dominium utile* of the land subject to the burden a notice in, or as nearly as may be in, the form contained in schedule 9 to this Act.

(2) A notice under this section shall—

- (a) set out the title of the superior;
- (b) describe, sufficiently to enable identification by reference to the Ordnance Map, the land the *dominium utile* of which is subject to the development value burden;
- (c) set out the terms of the burden;

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- (d) state that the burden reserves development value and set out any information relevant to that statement;
 - (e) set out, to the best of the superior’s knowledge and belief, the amount by which the consideration was reduced because of the imposition of the burden; and
 - (f) the superior reserves the right to claim compensation in accordance with section 35 of this Act.
- (3) Before submitting any notice for registration under this section, the superior shall swear or affirm before a notary public that to the best of the knowledge and belief of the superior all the information contained in the notice is true.
- (4) For the purposes of subsection (3) above, if the superior is—
- (a) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in that subsection, then a legal representative of the superior may swear or affirm;
 - (b) not an individual, then any person authorised to sign documents on its behalf may swear or affirm;
- and any reference in that subsection to a superior shall be construed accordingly.
- (5) In this Part of this Act, “development value” (except in the expression “development value burden”) means any significant increase in the value of the land arising as a result of the land becoming free to be used, or dealt with, in some way not permitted under the grant in feu.
- (6) This section is subject to sections 41 and 42 of this Act.

34 Transmissibility of right to claim compensation [j074.doc] **S**

A right to claim compensation reserved in accordance with section 33 of this Act is transmissible.

35 Claiming compensation **S**

- (1) Where the conditions mentioned in subsection (2) below are satisfied, any person who has, by or by virtue of a notice executed and registered in accordance with section 33 of this Act, a reserved right to claim compensation shall be entitled, subject to any order under section 44(2) of this Act, to compensation from the person who is the owner.
- (2) The conditions are that—
- (a) the real burden set out in the notice was, immediately before the appointed day, enforceable by the superior or would have been so enforceable immediately before that day had the person in question completed title to the *dominium directum*;
 - (b) on that day the burden, or as the case may be any right (or right on completion of title) of the superior to enforce the burden, was extinguished, or rendered unenforceable, by section 17(1) of this Act; and
 - (c) at any time—
 - (i) during the period of five years ending immediately before the appointed day, there was a breach of the burden; or
 - (ii) during the period of twenty years beginning with the appointed day, there was an occurrence, which, but for the burden becoming extinct,

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or unenforceable, as mentioned in paragraph (b) above, would have been a breach of the burden.

- (3) Where a person is entitled, by virtue of subsection (1) above, to compensation, he shall make any claim for such compensation by notice in writing duly served on the owner; and any such notice shall specify, in accordance with section 37 of this Act, the amount of compensation claimed.
- (4) Where, in relation to a claim made under subsection (3) above, the condition mentioned in—
 - (a) sub-paragraph (i) of subsection (2)(c) above applies, any such claim may not be made more than three years after the appointed day;
 - (b) sub-paragraph (ii) of subsection (2)(c) above applies, any such claim may not be made more than three years after the date of the occurrence.
- (5) For the purposes of this section, if a breach, or occurrence, such as is mentioned in subsection (2)(c) above is continuing, the breach or, as the case may be, occurrence shall be taken to occur when it first happens.
- (6) The reference in subsection (3) above to a notice being duly served shall be construed in accordance with section 36 of this Act.

36 Service under section 35(3) **S**

- (1) Due service under section 35(3) of this Act is effected by delivering the notice in question to the owner or by sending it by registered post, or the recorded delivery service, addressed to him at an appropriate place.
- (2) An acknowledgement, signed by the owner, which conforms to Form A of schedule 10 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 notice in question is, under subsection (1) above, sent by post but is returned to the person who is entitled to compensation with an intimation that it could not be delivered, the notice may be delivered or sent by post, with that intimation, to the Extractor of the Court of Session, the delivery or sending to the Extractor being taken to be equivalent to the service of that notice on the owner.
- (3) For the purposes of subsection (2) above, an acknowledgement of receipt by the Extractor on a copy of that notice shall be sufficient evidence of its receipt by him.
- (4) The date on which notice under section 35(3) of this Act is served on an owner 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 owner, 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.

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37 Amount of compensation **S**

- (1) The amount of any compensation payable on a claim made under section 35(3) of this Act shall, subject to subsections (2) and (3) below, be such sum as represents, at the time of the breach or occurrence in question, any development value which would have accrued to the owner had the burden been modified to the extent necessary to permit the land to be used, or dealt with, in the way that constituted the breach or, as the case may be, occurrence on which the claim is based.
- (2) The amount payable as compensation (or, where more than one claim is made in relation to the same development value burden, the total compensation payable) under subsection (1) above shall not exceed such sum as will make up for any effect which the burden produced, at the time when it was imposed, in reducing the consideration then paid or made payable for the feu.
- (3) In assessing for the purposes of subsection (1) above an amount of compensation payable—
 - (a) any entitlement of the claimant to recover any part of the development value of the land subject to the development value burden shall be taken into account; and
 - (b) a claimant to whom the reserved right was assigned or otherwise transferred shall be entitled to no greater sum than the former superior would have been had there been no such assignation or transfer.
- (4) The reference in subsection (1) above to a burden shall, in relation to an occurrence, be construed as a reference to the burden which would have been breached but for its becoming, by section 17(1) of this Act, extinct or unenforceable.

38 Duty to disclose identity of owner **S**

Where a person (“the claimant”) purports duly to serve notice under section 35(3) of this Act and the person on whom it is served, being a person who had right, before the time of the breach (or, as the case may be, occurrence) founded on by the claimant, to the dominium utile (or the ownership) of the land, is not the owner, that person shall forthwith disclose to the claimant—

- (a) the identity and address of the owner; or
- (b) (if he cannot do that) such other information as he has that might enable the claimant to discover the identity and address;

and the notice shall refer to that requirement for disclosure.

39 The expression “owner” for purposes of sections 35 to 38 **S**

- (1) In sections 35 to 38 of this Act, “owner” means the person who, at the time of the breach or, as the case may be, occurrence, mentioned in section 35(2)(c) of this Act, has right to—
 - (a) the dominium utile; or
 - (b) the ownership,
 of the land which, immediately before the appointed day, was subject to the development value burden, whether or not he has completed title; and if more than one person comes within that description, then the owner is the person who has most recently acquired such right.

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- (2) Where the land in question is held by two or more such owners as common property, 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 land).

40 Assignment, discharge, or restriction, of reserved right to claim compensation S

A reserved right to claim, in accordance with section 35 of this Act, compensation may be—

- (a) assigned, whether wholly or to such extent (expressed as a percentage of each claim which may come to be made) as may be specified in the assignment; or
- (b) discharged or restricted,

by execution and registration of an assignment, or as the case may be a discharge, or restriction, in the form, or as nearly as may be in the form, contained in schedule 11 to this Act.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 18C(1) words repealed by [2004 asp 7 sch. 2](#)
- s. 18C(3) words repealed by [2004 asp 7 sch. 2](#)