



Abolition of Feudal Tenure etc. (Scotland) Act 2000

2000 asp 5

PART 4

REAL BURDENS

Miscellaneous

41 Notices: pre-registration requirements etc.

- (1) This section applies in relation to any notice which is to be submitted for registration under this Act.
- (2) It shall not be necessary to endorse on the notice a warrant of registration.
- (3) Except where it is not reasonably practicable to do so, a superior shall, before he executes the notice, send by post to the person who has the estate of *dominium utile* of the land to which the burden relates (addressed to “The Proprietor” where the name of that person is not known) a copy of—
 - (a) the notice; and
 - (b) the explanatory note set out in whichever schedule to this Act relates to the notice.
- (4) A superior shall, in the notice, state either—
 - (a) that a copy of the notice has been sent in accordance with subsection (3) above; or
 - (b) that it was not reasonably practicable for such a copy to be sent.

42 Further provision as respects sections 18 to 20, 27 and 33

- (1) Where—
 - (a) a notice relating to a real burden has been registered under section 18, [F¹18A, 18B, 18C,] 20, 27 [F², 27A] or 33 of this Act; or
 - (b) an agreement relating to a real burden has been registered under section 19 of this Act,

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against the *dominium utile* of any land which is subject to the burden, it shall not be competent to register under any of those sections against that *dominium utile* another such notice or agreement relating to the same real burden; but nothing in this subsection shall prevent registration where—

- (i) the discharge of any earlier such notice has been registered by the person who registered that notice (or by his successor); or
 - (ii) as the case may be, the discharge of any earlier such agreement has been registered, jointly, by the parties to that agreement (or by their successors).
- (2) Where the *dominium utile* of any land comprises parts each held by a separate vassal, each part shall be taken to be a separate feudal estate of *dominium utile*.
- (3) Where more than one feudal estate of *dominium utile* is subject to the same real burden enforceable by a superior of the feu, he shall, if he wishes to execute and register a notice under section 18, [F1 18A, 18B, 18C,] 20, 27 [F2, 27A] or 33 of this Act against those feudal estates in respect of that real burden, require to do so against each separately.
- (4) Where a feudal estate of *dominium utile* is subject to more than one real burden enforceable by a superior of the feu, he may if he wishes to—
- (a) execute and register a notice under section 18, [F1 18A, 18B, 18C,] 20, 27 [F2, 27A] or 33 of this Act against that feudal estate in respect of those real burdens, do so by a single notice; or
 - (b) enter into and register an agreement under section 19 of this Act against that feudal estate in respect of those real burdens, do so by a single agreement.
- [F3(5) Nothing in this Part requires registration against land prospectively nominated as a dominant tenement but outwith Scotland.]

Textual Amendments

- F1** Words in s. 42(1)(a)(3)(4)(a) inserted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **Sch. 13 para. 7(a)(i)** (with ss. 119, 121)
- F2** Words in s. 42(1)(a)(3)(4)(a) inserted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **Sch. 13 para. 7(a)(ii)** (with ss. 119, 121)
- F3** S. 42(5) added (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 128(3), **Sch. 13 para. 7(b)** (with ss. 119, 121)

43 Notices and agreements under certain sections: extent of Keeper's duty

- (1) In relation to any notice submitted for registration under section 18, [F4 18A, 18B, 18C,] 20, 27 [F5, 27A] or 33 of this Act, the Keeper of the Registers of Scotland shall not be required to determine whether the superior has complied with the terms of section 41(3) of this Act.
- (2) In relation to any notice, or as the case may be any agreement, submitted for registration under—
- (a) section 18, [F4 18A, 18B, 18C,] 19, 20, 27 [F5, 27A] or 33 of this Act, the Keeper shall not be required to determine whether, for the purposes of subsection (1) of the section in question, a real burden is enforceable by a superior;
 - (b) section 18 of this Act, the Keeper shall not be required to determine, where, in pursuance of subsection (2)(c) of that section, the condition specified is

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- that mentioned in subsection (7)(a) of that section, whether the terms of that condition are satisfied;
- [^{F6}(bb) section 18B or 18C of this Act, the Keeper shall not be required to determine whether—
- (i) the requirements of subsection (1) of the section in question are satisfied; or
 - (ii) the statement made in pursuance of subsection (2)(e) of the section in question is correct;]
- (c) paragraph (c) of subsection (1) of section 19 of this Act, the Keeper shall not be required to determine whether the requirements of paragraph (a) of that subsection are satisfied;
- (d) section 20 of this Act, the Keeper shall not be required to determine—
- (i) whether the description provided in pursuance of subsection (2) of that section is correct;
 - (ii) whether the notice has been executed, and is being registered, timeously; or
 - (iii) any matter as to which the Lands Tribunal must be satisfied before making an order under that section;
- (e) section 33 of this Act, the Keeper shall not be required to determine whether—
- (i) the requirements of subsection (1)(a) and (b) of that section are satisfied; or
 - (ii) the statements made or information provided, in pursuance of subsection (2)(d) or (e) of that section, are correct.
- (3) The Keeper shall not be required to determine—
- (a) for the purposes of section 18(6), [^{F7}18A(5), 18B(3), 18C(3),] 19(5), 20(5) or (8)(a)(i), 28 [^{F8}, 28A] or 60(1) of this Act, whether immediately before the appointed day a real burden is, or is still, enforceable, or by whom; or
 - (b) for the purposes of subsection (8)(a)(ii) of section 20 of this Act, whether immediately before the day of registration of an order of the Lands Tribunal under subsection (7) of that section a real burden is, or is still, enforceable, or by whom.

Textual Amendments

- F4** Words in s. 43(1)(2)(a) inserted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **Sch. 13 para. 8(a)(i)** (with ss. 119, 121)
- F5** Words in s. 43(1)(2)(a) inserted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **Sch. 13 para. 8(a)(ii)** (with ss. 119, 121)
- F6** S. 43(2)(bb) inserted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 128(3), **Sch. 13 para. 8(b)** (with ss. 119, 121)
- F7** Words in s. 43(3)(a) inserted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **Sch. 13 para. 8(c)(i)** (with ss. 119, 121)
- F8** Words in s. 43(3)(a) inserted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **sch. 13 para. 8(c)(ii)** (with ss. 119, 121)

44 Referral to Lands Tribunal of notice dispute

- (1) Any dispute arising in relation to a notice registered under this Act may be referred to the Lands Tribunal; and, in determining the dispute, the Tribunal may make such

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order as it thinks fit discharging or, to such extent as may be specified in the order, restricting the notice in question.

- (2) Any dispute arising in relation to a claim made under section 35(3) of this Act may be referred to the Lands Tribunal; and, in determining the dispute, the Tribunal may make such order as it thinks fit (including an order fixing the amount of any compensation payable under the claim in question).
- (3) In any referral under subsection (1) or (2) above, the burden of proving any disputed question of fact shall be on the person relying on the notice or, as the case may be, making the claim.
- (4) An extract of any order made under subsection (1) or (2) above may be registered and the order shall take effect as respects third parties on such registration.

45 Circumstances where certain notices may be registered after appointed day

- (1) Subject to subsection (2) below, where—
 - (a) a notice submitted, before the appointed day, for registration under this Act, or an agreement so submitted for registration under section 19 of this Act, is rejected by the Keeper of the Registers of Scotland; but
 - (b) a court or the Lands Tribunal then determines that the notice or agreement is registrable,
 the notice or agreement may, if not registered before the appointed day, be registered—
 - (i) within two months after the determination is made; but
 - (ii) before such date after the appointed day as the Scottish Ministers may by order prescribe,
 and any notice or agreement registered under this subsection on or after the appointed day shall be treated as if it had been registered before that day.
- (2) For the purposes of subsection (1) above, the application to the court, or to the Lands Tribunal, which has resulted in the determination shall require to have been made within such period as the Scottish Ministers may by order prescribe.
- (3) In subsection (1)(b) above, “court” means any court having jurisdiction in questions of heritable right or title.

VALID FROM 28/11/2004

46 Duties of Keeper: amendments relating to the extinction of certain real burdens

- (1) The Keeper of the Registers of Scotland shall not be required to remove from the Land Register of Scotland a real burden extinguished by section 17(1)(a) ^{F9} . . . of this Act unless—
 - (a) subject to subsection (3) below, he is requested to do so in an application for registration or rectification; or
 - (b) he is, under section 9(1) of the Land Registration (Scotland) Act 1979 (c.33) (rectification of the register), ordered, subject to subsection (3) below, to do so by the court or the Lands Tribunal;

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and no such request or order shall be competent during a period which commences with the appointed day and is of such number of years as the Scottish Ministers may by order prescribe.

- (2) During the period mentioned in subsection (1) above a real burden, notwithstanding that it has been so extinguished, may at the discretion of the Keeper, for the purposes of section 6(1)(e) of that Act of 1979 (entering [^{F10}subsisting] real right in title sheet), be taken to subsist; but this subsection is without prejudice to subsection (3) below.
- (3) The Keeper shall not, before the date mentioned in subsection (4) below, remove from the Land Register of Scotland a real burden which is the subject of a notice or agreement in respect of which application had been made for a determination by—
 - (a) a court; or
 - (b) the Lands Tribunal,under section 45(1)(b) of this Act.
- (4) The date is whichever is the earlier of—
 - (a) that two months after the final decision on the application; and
 - (b) that prescribed under section 45(1)(ii) of this Act.

Textual Amendments

- F9** Words in s. 46(1) repealed (4.4.2003) by [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#), ss. 128(2), 129(5)(b)(c), [sch. 15](#) (with ss. 119, 121)
- F10** Words in s. 46(2) substituted (4.4.2003) by [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#), ss. 114(6), 129(3), [sch. 13 para. 9](#) (with ss. 119, 121)

47 Extinction of counter-obligation

Without prejudice to any other way in which a counter-obligation to a real burden may be extinguished, any such counter-obligation is extinguished on the extinction of the real burden.

48 No implication as to dominant tenement where real burden created in grant in feu

Where a real burden is created (or has at any time been created) in a grant in feu, the superior having the *dominium utile*, or allodial ownership, of land (the “superior’s land” in the vicinity of the land feued, no implication shall thereby arise that the superior’s land is a dominant tenement.

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