



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

2000 asp 5

## PART 6

### MISCELLANEOUS

#### *Discharge of certain rights and extinction of certain obligations and payments*

#### **53 Discharge of rights of irritancy**

- (1) All rights of irritancy held by a superior are, on the day on which this section comes into force, discharged; and on that day any proceedings already commenced to enforce any such right shall be deemed abandoned and may, without further process and without any requirement that full judicial expenses shall have been paid by the pursuer, be dismissed accordingly.
- (2) Subsection (1) above shall not affect any cause in which final decree (that is to say, any decree or interlocutor which disposes of the cause and is not subject to appeal or review) is granted before the coming into force of this section.

#### **54 Extinction of superior's rights and obligations qua superior**

- (1) Subject to section 13, to Part 4, and to section 60(1), of this Act, a right or obligation which, immediately before the appointed day, is enforceable by, or as the case may be against, a superior qua superior shall, on that day, be extinguished.
- (2) Subject to subsection (3) below—
  - (a) on or after the appointed day, no proceedings for such enforcement shall be commenced;
  - (b) any proceedings already commenced for such enforcement shall be deemed to have been abandoned on that day and may, without further process and without any requirement that full judicial expenses shall have been paid by the pursuer, be dismissed accordingly; and

- (c) any decree, or interlocutor, already pronounced in proceedings for such enforcement shall be deemed to have been reduced, or as the case may be recalled, on that day.
- (3) Subsection (2) above shall not affect any proceedings, decree or interlocutor in relation to—
- (a) a right of irritancy held by a superior; or
  - (b) a right to recover damages or to the payment of money.

## **55 Abolition of thirlage**

Any obligation of thirlage which has not been extinguished before the appointed day is extinguished on that day.

## **56 Extinction etc. of certain payments analogous to feuduty**

- (1) The provisions of Part 3 of this Act shall apply as regards ground annual, skat, teind, stipend, standard charge, dry multures (including compensation payable in respect of commutation pursuant to the Thirlage Act 1799 (c. 55)) and, subject to the exceptions mentioned in subsection (2) below, as regards any other perpetual periodical payment in respect of the tenure, occupancy or use of land or under a land obligation, as those provisions apply as regards feuduty; but for the purposes of that application—
- (a) references in the provisions to “vassal” and “superior” shall be construed as references to, respectively, the payer and the recipient of the ground annual, skat, teind, stipend, standard charge, dry multures or other payment in question (“former vassal” and “former superior” being construed accordingly); and
  - (b) a form (and its explanatory note) contained in a schedule to this Act shall be modified so as to accord with the kind of payment to which it relates.
- (2) The exceptions are any payments—
- (a) in defrayal of, or as a contribution towards, some continuing cost related to land; or
  - (b) made under a heritable security.
- (3) The definition of “land obligation” in subsection (2) of section 1 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) shall apply for the purposes of this section as it applies for the purposes of that section.
- (4) Nothing in subsections (1) to (3) above shall be taken to prejudice the tenure, occupancy or use of land.

## **57 Extinction by prescription of obligation to pay redemption money for feuduty, ground annual etc**

Notwithstanding the terms of Schedule 1 to the Prescription and Limitation (Scotland) Act 1973 (c. 52) (which defines obligations affected by prescriptive periods of five years), any obligation under section 5 (redemption of feuduty, ground annual etc. on transfer for valuable consideration) or 6 (redemption of feuduty, ground annual etc. on compulsory acquisition) of the Land Tenure Reform (Scotland) Act 1974 (c. 38) to pay redemption money is an obligation to which section 6 of that Act of 1973 (extinction

of obligation by prescriptive period of five years) applies; and for the purposes of that application, the reference in subsection (1) of section 6 of that Act of 1973 to the “appropriate date” is a reference to the date of redemption within the meaning of—

- (a) except in the case mentioned in paragraph (b) below, section 5 (read, as the case may be, with section 6(2)(a)); or
- (b) in the case of an obligation arising out of the acquisition of land by means of a general vesting declaration, section 6(4),

of that Act of 1974.

### *The Crown, the Lord Lyon and Barony*

#### **58 Crown application**

- (1) This Act binds the Crown and accordingly such provision as is made by section 2 of this Act as respects feudal estates of dominium shall apply to the superiority of the Prince and Steward of Scotland and to the ultimate superiority of the Crown; but nothing in this Act shall be taken to supersede or impair any power exercisable by Her Majesty by virtue of Her prerogative.
- (2) Without prejudice to the generality of subsection (1) above, in that subsection—
  - (a) Her Majesty’s prerogative includes the prerogative of honour; and
  - (b) “any power exercisable by Her Majesty by virtue of Her prerogative” includes—
    - (i) prerogative rights as respects ownerless or unclaimed property; and
    - (ii) the *regalia majora*.

#### **59 Crown may sell or otherwise dispose of land by disposition**

It shall be competent for the Crown, in selling or otherwise disposing of any land, to do so by granting a disposition of that land.

#### **60 Preserved right of Crown to maritime burdens**

- (1) Where, immediately before the appointed day, the Crown has the right as superior to enforce a real burden against part of the sea bed or part of the foreshore, then, on and after that day, the Crown shall—
  - (a) subject to any counter-obligation, have title to enforce; and
  - (b) be presumed to have an interest to enforce,the burden; and any burden as respects which the Crown has such title and interest shall, on and after the appointed day, be known as a “maritime burden”.
- (2) The right of the Crown to a maritime burden may not be assigned.
- (3) For the purposes of this section—
  - “sea bed” means the bed of the territorial sea adjacent to Scotland; and
  - “territorial sea” includes any tidal waters.
- (4) In this section, “real burden” has the same meaning as in Part 4 of this Act.

**61 Mines of gold and silver**

The periodical payment to the Crown, in respect of the produce of a mine which by the Royal Mines Act 1424 (c. 12) belongs to the Crown, of an amount which is not fixed but is calculated as a proportion of that produce is not—

- (a) a payment to the Crown qua superior for the purposes of section 54 of this Act;
- (b) a perpetual periodical payment for the purposes of section 56 of this Act; or
- (c) a feuduty for the purposes of Part 3 of this Act.

**62 Jurisdiction and prerogative of Lord Lyon**

Nothing in this Act shall be taken to supersede or impair the jurisdiction or prerogative of the Lord Lyon King of Arms.

**63 Baronies and other dignities and offices**

- (1) Any jurisdiction of, and any conveyancing privilege incidental to, barony shall on the appointed day cease to exist; but nothing in this Act affects the dignity of baron or any other dignity or office (whether or not of feudal origin).
- (2) When, by this Act, an estate held in barony ceases to exist as a feudal estate, the dignity of baron, though retained, shall not attach to the land; and on and after the appointed day any such dignity shall be, and shall be transferable only as, incorporeal heritable property (and shall not be an interest in land for the purposes of the Land Registration (Scotland) Act 1979 (c. 33) or a right as respects which a deed can be recorded in the Register of Sasines).
- (3) Where there is registered, before the appointed day, a heritable security over an estate to which is attached the dignity of baron, the security shall on and after that day (until discharge) affect—
  - (a) in the case of an estate of *dominium utile*, both the dignity of baron and the land; and
  - (b) in any other case, the dignity of baron.
- (4) In this section—
  - “conveyancing privilege” includes any privilege in relation to prescription;
  - “dignity” includes any quality or precedence associated with, and any heraldic privilege incidental to, a dignity; and
  - “registered” has the same meaning as in Part 4 of this Act.

*Kindly Tenants of Lochmaben***64 Abolition of Kindly Tenancies**

- (1) The system of land tenure whereby the persons known as the Kindly Tenants of Lochmaben hold land on perpetual tenure without requiring to procure infeftment is, on the appointed day, abolished.
- (2) On the appointed day the interest of a Kindly Tenant shall forthwith become the ownership of the land (which shall be taken to include any right of salmon fishing inseverable from the kindly tenancy); and, in so far as is consistent with the provisions

of this Act, the land shall be subject to the same subordinate real rights and other encumbrances as was the kindly tenancy.

- (3) A right of salmon fishing inseverable from a kindly tenancy shall on and after the appointed day be inseverable from the ownership of the land in question.

### *Miscellaneous*

#### **65 Creation of proper liferent**

- (1) A proper liferent over land is created—
- (a) in a case where the right is registrable under section 2 of the Land Registration (Scotland) Act 1979 (c. 33)—
    - (i) (unless the deed granting or reserving the right makes provision for some later date) on registration; or
    - (ii) (where provision is made for such a date and the right has been registered) on that date; or
  - (b) in any other case—
    - (i) (unless the deed granting or reserving the right makes provision for some later date) on recording of the deed in the Register of Sasines; or
    - (ii) (where provision is made for such a date and such deed has been so recorded) on that date.
- (2) This section is without prejudice to any other enactment, or rule of law, by or under which a proper liferent over land may be created.
- (3) In subsection (1)(a) above, “registrable” and “registration” have the meanings respectively assigned to those expressions by section 1(3) of the Land Registration (Scotland) Act 1979 (c. 33).
- (4) The references, in subsection (1)(b) above, to a deed being recorded include references to a notice of title deducing title through a deed being recorded.

#### **66 Obligation to make title deeds and searches available**

A possessor of title deeds or searches which relate to any land shall make them available to a person who has (or is entitled to acquire) a real right in the land, on all necessary occasions when the person so requests, at the person’s expense.

#### **67 Prohibition on leases for periods of more than 175 years**

- (1) Notwithstanding any provision to the contrary in any lease, no lease of land executed on or after the coming into force of this section (in this section referred to as the “commencement date”) may continue for a period of more than 175 years; and any such lease which is still subsisting at the end of that period shall, by virtue of this subsection, be terminated forthwith.
- (2) If a lease of land so executed includes provision (however expressed) requiring the landlord or the tenant to renew the lease then the duration of any such renewed lease shall be added to the duration of the original lease for the purposes of reckoning the period mentioned in subsection (1) above.
- (3) Nothing in subsection (1) above shall prevent—

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*Status: This is the original version (as it was originally enacted).*

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- (a) any lease being continued by tacit relocation; or
  - (b) the duration of any lease being extended by, under or by virtue of any enactment.
- (4) Subsections (1) and (2) above do not apply—
- (a) to a lease executed on or after the commencement date in implement of an obligation entered into before that date;
  - (b) to a lease executed after the commencement date in implement of an obligation contained in a lease such as is mentioned in paragraph (a) above; or
  - (c) where—
    - (i) a lease for a period of more than 175 years has been executed before the commencement date; or
    - (ii) a lease such as is mentioned in paragraph (a) or (b) above is executed on or after that date,
 to a sub-lease executed on or after that date of the whole, or part, of the land subject to the lease in question.
- (5) For the purposes of this section “lease” includes sub-lease.

## 68 Certain applications to Sheriff of Chancery

After section 26 of the Titles to Land Consolidation (Scotland) Act 1868 (c. 101) there shall be inserted—

### **“26A Application for declarator of succession as heir in general or to specified lands**

On an application being made by any person having an interest, the Sheriff of Chancery may, if satisfied that—

- (a) such deceased person as may be specified in the application died before 10th September 1964 and that person either—
  - (i) was domiciled in Scotland at the date of his death; or
  - (ii) was the owner of lands situated in Scotland to which the application relates; and
- (b) the applicant, or as the case may be such person as may be specified in the application, has succeeded as heir to that deceased, and is either—
  - (i) heir in general; or
  - (ii) heir to such lands as may be specified in the application,
 grant declarator that the applicant, or as the case may be such person as may be specified in the declarator, is the heir in general or heir to the lands so specified.

### **26B Application for declarator of succession as heir to last surviving trustee under a trust**

On an application being made under this section, the Sheriff of Chancery may, if satisfied that—

- (a) such deceased person as may be specified in the application was the last surviving trustee named in, or assumed under, a trust;
- (b) the trust provides for the heir of such last surviving trustee to be a trustee;

- (c) either—
  - (i) the trust is governed by the law of Scotland; or
  - (ii) lands subject to the trust and to which the application relates are situated in Scotland; and
- (d) the applicant has succeeded as heir to the deceased,  
grant declarator that the applicant is the heir of the deceased and accordingly is a trustee under the trust.

### **26C Construction of reference to service of heir**

A reference in any enactment or deed to a decree of service of heir (however expressed) shall include a reference to a declarator granted under section 26A or 26B of this Act.”

## **69 Application of 1970 Act to earlier forms of heritable security**

- (1) Sections 14 to 30 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) (which provisions relate to the assignation, variation, discharge and calling-up etc. of standard securities) shall apply (with the substitution of the word “heritable” for “standard” and subject to such other modifications as may be necessary) as respects any heritable security granted before 29th November 1970 as those provisions apply as respects a standard security.
- (2) For the purposes of the said sections 14 to 30 (as modified by, or by virtue of, subsection (1) above), “heritable security” shall, with the modification mentioned in subsection (3) below, include a pecuniary real burden but shall not include a security constituted by *ex facie* absolute disposition.
- (3) The modification is that the reference to the date in subsection (1) above shall be disregarded.

## **70 Ownership of land by a firm**

A firm may, if it has a legal personality distinct from the persons who compose it, itself own land.