Abolition of Feudal Tenure etc. (Scotland) Act 2000

2000 asp 5

PART 7

GENERAL

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

(1) Where a term or expression, which before the appointed day would ordinarily, or in the context in which it is used, depend for its meaning on there being a feudal system of land tenure, requires to be construed, in relation to any period from that day onwards—

(a) in an enactment (other than this Act) passed **[**[F1]before that day**]**;

(b) in an enactment contained in subordinate legislation made **[**[F1] before that day**]**; [F2] . . .

(c) in a document executed **[**[F1]before that day**][**[F3]; [F4]...

(d) in the Land Register of Scotland or in—

(i) a land certificate;

(ii) a charge certificate; or

(iii) an office copy,

issued, whether or not before that day, under the Land Registration (Scotland) Act 1979 (c. 33),**[**[F5] or

(e) in an extract or certified copy issued under section 104 of the Land Registration etc. (Scotland) Act 2012 (asp 5),**]**

then**]** in so far as the context admits, where the term or expression is, or contains, a reference to—

(i) the *dominium utile* of the land, that reference shall be construed either as a reference to the land or as a reference to the ownership of that land;

(ii) an estate in land, that reference shall be construed as a reference to a right in land and as including ownership of land;

(iii) a vassal in relation to land, that reference shall be construed as a reference to the owner of the land;

(iv) feuing, that reference shall be construed as a reference to disponing;

Changes to legislation: *Abolition of Feudal Tenure etc. (Scotland) Act 2000, Section 73 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(v) a feu disposition, that reference shall be construed as a reference to a disposition;

(vi) taking infeftment, that reference shall be construed as a reference to completing title,

analogous terms and expressions being construed accordingly .

(2) On and after the appointed day, any reference

[[F6](a)**]** in any document executed before that day**[**[F7] or**]**

[[F7](b) in the Land Register of Scotland or in any certificate or copy such as is mentioned in **[**[F8]paragraph (d) of, or extract or certified copy such as is mentioned in paragraph (e) of, subsection (1)**]** above (whenever issued),**]**

to a superior shall, where that reference requires to be construed in relation to a real burden which a person is entitled, by virtue of section 18, **[**[F9]18A, 18B, 18C, 19, 20, 28, 28A or 60 of this Act or section 56 of the Title Conditions (Scotland) Act 2003 (asp 9) (facility burdens and service burdens)**]**, to enforce on and after that day, be construed as a reference to that person.

[[F10](2A) In construing, after the appointed day and in relation to a right enforceable on or after that day, a document, or entry in the Land Register, which—

(a) sets out the terms of a real burden; and

(b) is not a document or entry references in which require to be construed as mentioned in subsection (2) above,

any provision of the document or entry to the effect that a person other than the person entitled to enforce the burden may waive compliance with, or mitigate or otherwise vary a condition of, the burden shall be disregarded.**]**

(3) Subsection (1) above is without prejudice to section 76 of, and schedules 12 and 13 to, this Act or to any order made under subsection (3) of that section.

(4) In subsection (1) above—

(a) in paragraph (a), "enactment" includes a local and personal or private Act; and

(b) in paragraph (b), "subordinate legislation" has the same meaning as in the Interpretation Act 1978 (c.30) (but includes subordinate legislation made under an Act of the Scottish Parliament).

Textual Amendments

F1 Words in s. 73(1)(a)(b)(c) inserted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **sch. 13 para. 13(a)(i)** (with ss. 119, 121)

F2 Word in s. 73(1)(b) repealed (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **sch. 13 para. 13(a)(ii)** (with ss. 119, 121)

F3 Words in s. 73(1) substituted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 114(6), 129(3), **sch. 13 para. 13(a)(iii)** (with ss. 119, 121)

F4 Word in s. 73(1) repealed (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **Sch. 5 para. 39(8)(a)(i)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

F5 S. 73(1)(e) and word inserted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **Sch. 5 para. 39(8)(a)(ii)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

F6 Words in s. 73(2) renumbered (4.4.2003) as s. 73(2)(a) by Title Conditions (Scotland) Act 2003 (asp 9), **ss. 114(6)**, 129(3) {sch. 13 para. 13(b)(i)}, (with ss. 119, 121)

F7 S. 73(2)(b) and preceding word inserted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), **ss. 114(6)**, 129(3) {sch. 13 para. 13(b)(ii)}, (with ss. 119, 121)

F8 Words in s. 73(2)(b) substituted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **Sch. 5 para. 39(8)(b)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

F9 Words in s. 73(2) substituted (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), **ss. 114(6)**, 129(3) {sch. 13 para. 13(b)(iii)}, (with ss. 119, 121)

F10 S. 73(2A) added (4.4.2003) by Title Conditions (Scotland) Act 2003 (asp 9), **ss. 114(6)**, 129(3) {sch. 13 para. 13(c)}, (with ss. 119, 121)

Changes to legislation:
Abolition of Feudal Tenure etc. (Scotland) Act 2000, Section 73 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

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