



Thirlage Act 1799

1799 CHAPTER 55 39 Geo 3

E+W+S

An Act for encouraging the improvement of lands subject to the servitude of thirlage in
F1

Scotland.

[13th June 1799]

Whereas it is found by experience that the servitude of thirlage, and right of mill services incident thereto in^{F1} Scotland, are very unfavourable to the general improvement of the country, by checking the industry of the occupiers of the ground, and by occasioning troublesome and expensive litigation, and that it is highly expedient that it should be allowed to persons subject to such servitude to compensate or to commute the same by a fixed annual payment in lieu and satisfaction of the said right of thirlage, and of all services, prestations and restrictions thereto incident or pertaining, and in some cases to make an entire and complete purchase of the same for a fair and adequate price:

Textual Amendments

F1 Words repealed by [Statute Law Revision Act 1948 \(c. 62\), s. 4\(b\)](#)

Modifications etc. (not altering text)

- C1 Act: repealed (S.) (*prosp.*) by [2000 asp 5, ss. 76\(2\), 77\(2\)\(a\)\(d\), Sch. 13 Pt. 1](#) (with ss. 58, 62, 75)
- C2 Short title “The Thirlage Act 1799” given by [Short Titles Act 1896 \(c. 14\)](#)
- C3 Certain words of enactment repealed by [Statute Law Revision Act 1888 \(c. 3\)](#)
- C4 Certain words of enactment and other words omitted under authority of [Statute Law Revision Act 1948 \(c. 62\), s. 3\(1\)\(a\)\(d\)](#)
- C5 Tenures abolition Act 1746 cited or referred to by its short title under authority of [Statute Law Revision Act 1893 \(c. 14\), s. 3](#)

[1.] Proprietors of lands thirled, or of mills to which lands are thirled, may apply to have the thirlage commuted, to the sheriff or steward depute, or substitute, who

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shall proceed as herein directed. Act not to infringe the right of taking materials for supporting mill dams, &c. E+W+S

From and after the passing of this Act it shall and may be lawful for the proprietor or proprietors of any lands or tenements thirled or astricted to any mill in . . . ^{F2} Scotland, or to the proprietor of any mill to which the lands or tenements of any other person or persons are thirled or astricted, who shall be desirous to have such thirlage or astriction changed or commuted into such annual payment, to apply to His Majesty's sheriff or steward depute of the county in which such lands or tenements and mills are situated, or to his substitute, by a petition, setting forth such his or their desire, and specifying the lands and tenements so thirled which he or they is or are desirous should be freed from such thirlage, and the mill or mills to which such lands or tenements are so thirled, and also the nature of the thirlage, the several species of corn or grain over which it is extended, the quantity of multure paid for grinding every sort of grain, the services dependent on the right, and the total amount of the multures and other dues claimed or allowed to be due; which petition the said sheriff or steward depute or substitute shall order to be served on the other party or parties interested in the said thirlage, and on the tenant or tenants of the mill or mills described in the said petition, and shall also cause an edictal citation to be made of all parties having or pretending to have interest in the said thirlage at the church or churches of the parish or parishes within which the mill and also the lands thirled thereto are situated; and the party or parties on whom such petition is served shall within forty days after such service and citation if within Scotland, or if furth thereof, then within sixty days, lodge with the sheriff or steward's clerk their answers to the petition (and if any of the said subjects are entailed, on the next substitute heir of entail within the kingdom, who would succeed failing the heir in possession and his family), and shall therein set forth all objections they may have either to any further procedure or to the matter of the said petition; and they shall also state every claim, demand or deduction, which they are either then or afterwards to make or crave; which petition and answers the sheriff or steward depute or his substitute shall immediately take into consideration, and within thirty days shall make an order or decree finding and declaring the precise matters in the said petition and answers which are relevant to pass to the knowledge of a jury in manner after mentioned; and twenty days from the date of such order or decree having elapsed, or in case of any advocacy, suspension or other stay by the authority of a superior court, within ten days after such advocacy, suspension or other stay has been discussed and removed, the sheriff or steward depute or his substitute shall pronounce an interlocutor appointing a jury to be summoned on a certain day, to be expressed in the said interlocutor, at the distance of not less than thirty and not more than forty days from the date of such interlocutor, to give their verdict or determination on the matters contained in the said petition and answers and decree made thereon by the said sheriff or steward depute or substitute, or by a superior court, in such manner and for such purpose as herein-after is directed; and the said sheriff or steward depute or his substitute is hereby directed and required to summon an assize of at the least twenty-one impartial and disinterested men, each of whom shall be an heritor or tenant of land paying thirty pounds sterling of yearly rent within the said county, or in the case of heritors occupying their own lands then of thirty pounds Scots of valued rent, on such day as shall be mentioned in the interlocutor aforesaid; which assize being called on the said day, the number of persons then attending on the said assize shall be reduced to nine by each party (that is, the proprietor of the mill on the one part, and the proprietor or proprietors of the thirled lands or tenements on the other,) striking off alternately, beginning on the part of the proprietor of the mill, or in case of any of the parties not appearing, by the sheriff or steward depute or substitute striking off for and on behalf of such party, till the number be reduced to nine, who shall be sworn and

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constitute a jury for the determination of the annual value of the thirlage services and prestations thereto annexed which is submitted to their consideration; before which jury and the said sheriff or steward depute or substitute the said petition and answers and decree, together with such evidence as any of the parties may incline, shall be laid; which evidence shall be taken in writing and remain for four years at least upon record in the court where it was taken; and after deliberating thereon and hearing parties and their procurators, if they shall desire to be heard, and upon a due consideration of all the circumstances of the case, the said jury shall, by their verdict or determination, fix and ascertain the amount of such annual payment in grain of such kinds and in such quantity and amount as to the said jury shall appear to be a just, fair and equal value and compensation for the said right of thirlage, and all and every service, prestation or restriction thereto annexed or incident; of which verdict or determination an abbreviate shall be registered by any of the parties in the general register of sasines at Edinburgh, or the particular register for the said county, within sixty days after the pronouncing of such verdict or determination: Provided always, that nothing herein contained shall invalidate or infringe the right competent to the proprietor of any mill for supporting and repairing the mill dam and the ledd or aqueduct conducting the water to such mill, by taking stones, turf or other materials from the thirled lands of any neighbouring heritor along which the said aqueduct passes, or of deepening or clearing the same, conform to use and wont.

Textual Amendments

F2 Words repealed by [Statute Law Revision Act 1948 \(c. 62\)](#), s. 4(b)

Modifications etc. (not altering text)

C6 s.1 amended by [Land Registration \(Scotland\) Act 1979 \(c.33, SIF 31:3\)](#), s. 29(2)(3)

2 Sheriff, &c. may determine all questions in law contained in petitions and answers. **E+W+S**

And whereas the said petition and answers may contain matters of law touching rights of thirlage, whereto the said sheriff or steward depute or substitute has not a competent jurisdiction: Be it therefore enacted, that it shall be lawful to the said sheriff or steward depute or substitute, and they are hereby empowered and authorized, to decide and determine, by their order or decree on the said petition and answers, all questions in law therein contained respecting the nature, quality and extent of the thirlage to be valued, and services, prestations and restrictions thereto incident, or the claims, demands and deductions made or craved by either of the parties, any law or practice to the contrary notwithstanding.

3 Sheriff, &c. not to declare land thirled if the proprietor deny it, unless the other party produce proof of the right. **E+W+S**

Provided always, that it shall not be lawful to the said sheriff or steward depute or substitute to pronounce any judgement or decree finding or declaring lands to be thirled or astricted to a mill, where the proprietor of the lands denies the existence of any such right of thirlage, unless the other party produce an extract of a decree of declarator pronounced by the Court of Session, or sufficient evidence thereof in proof of his right, and that the said sheriff or steward depute or substitute shall (such production not being made) dismiss the petition in so far as regards the lands which

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are denied to be thirled, and proceed only to the valuation of the thirlage of those lands which are confessed to be thirled, as in manner is before directed.

4 After three years registration of the verdict, it shall not be altered, &c. E+W+S

And be it specially enacted, provided and declared, that after the expiry of three years from the registration of the verdict of the jury the said verdict and the proceedings had relative thereto shall not be reduced, set aside, reviewed, altered or amended by the Court of Session or any other judicatory, for any neglect of the provisions herein contained, or for any informality or error, or for any other reason or pretext whatever; and if any party shall pursue any process of reduction of the verdict of the jury or other process for setting the same aside, or for altering or amending the same, in the Court of Session, and shall fail in such pursuit or process, such party prosecuting as aforesaid shall be liable to the other party or parties in full costs of suit.

5 After verdict all restrictions to cease, and the proprietor of the mill shall be bound to receive the compensation in corn, or its value in money, at the option of the payer. E+W+S

And after such verdict and determination as aforesaid the servitude of thirlage, and all services, prestations and restrictions pertaining or any way incident thereto, so valued by the said jury, shall cease to be exigible from or binding upon either or any of the parties, but that in lieu thereof the said proprietor or proprietors, occupier or occupiers of the thirled lands or tenements shall be bound and obliged to pay, and the proprietor of the mill to which the said lands or tenements are thirled shall be bound and obliged to receive annually, at the mill where the multure under the former servitude of thirlage was in use to be paid or at some other convenient place to be fixed by the jury, such quantity or amount of corn or grain of such kind or sort, kinds or sorts, as the said jury shall in manner aforesaid determine to be a just compensation or equivalent for such right of thirlage, or, in the option of the payer, the value of such corn or grain in money, according to the value or price put upon such kind or kinds of corn or grain by the fiars of the county in which the grain is payable for the year within which such payment is due.

Modifications etc. (not altering text)

C7 S. 5 amended by [Conveyancing \(Scotland\) Act 1924 \(c. 27\), s. 12\(6\)](#)

6 Verdict not to be delayed by absence of any persons interested, but the day for taking it may be adjourned, on sufficient reason being shown. E+W+S

Provided always, that such verdict or determination shall not be prevented or delayed by the absence or non-attendance of any person interested in such thirlage, but that the jury shall proceed on such evidence as shall be produced to them by any of the parties then and there attending, and pronounce such verdict and determination as aforesaid, which shall be as valid and effectual to all intents and purposes as if all the parties interested therein had attended and been heard in relation thereto; but it is also provided, that if any of the parties shall shew sufficient reason for adjourning the said day appointed for taking the verdict of the jury, it shall be lawful for the said sheriff or steward depute or substitute to make such adjournment to any day within thirty days

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from the day first appointed, the party praying an adjournment always defraying all expenses thereby incurred.

7 Annual payment in lieu of thirlage to be made at Candlemas. E+W+S

And the annual payment herein above directed to be made in lieu and satisfaction of the said servitude of thirlage shall be payable at the term of Candlemas in each year, the first payment to be made at the term of Candlemas immediately subsequent to the date of the verdict or determination of the said jury; the amount of which first payment shall be fixed by the said jury according to such proportion as they shall judge reasonable on the whole circumstances of the case.

8 The commutation for thirlage to mills let on lease shall be full compensation to the lessees of the mills; and where paid by proprietors of lands thirled and let on lease, the lessee of the lands shall repay the proprietor. E+W+S

And where the mill or mills aforesaid, with the rights of thirlage thereto annexed, are let to tenants under tacks or leases, the annual payment in grain or money so as aforesaid to be paid as a commutation or equivalent for the right of thirlage annexed to such mill shall and the same is hereby declared to be payable during the term or currency of such tack or lease to the tenant or lessee of such mill or mills, and such annual payment shall be to such tenant or lessee, tenants or lessees, full compensation for or in lieu and satisfaction of all multure, mill services or other rights or servitudes pertaining or incident to the said right of thirlage let to him or them by such tack or lease, such tack or lease or any condition or prestation therein contained notwithstanding; and where the lands of the servient tenement or estate thirled are let in lease to tenants, and the proprietor shall pay the annual commutation or equivalent, the lessees shall in that case be obliged to make payment to the proprietor of a proportion of the said annual commutation or equivalent, corresponding to the rent of the lands let in lease compared with the total amount of rent payable by the whole lands thirled, and that the said proportion of the said annual commutation or equivalent shall be recoverable by the proprietor in the same manner in which he is entitled to recover his rent.

9 On objection of tenants paying one fourth of the rent of lands thirled, a jury shall proportion the commutation. E+W+S

Provided always, that if the proportion by rent shall be objected to by tenants paying one fourth or more of the rent of the lands thirled, the said jury shall then divide, according to the best of their judgement, information and belief, the different parts of the commutation to be paid by the several tenants according to the value of multures, services and prestations legally exigible from the several respective farms occupied or possessed by them; or if the parties are not then prepared, the sheriff or steward depute or his substitute is hereby authorized and required, at the request and desire of the above-mentioned proportion of the tenants, again to convene the aforesaid jury in manner and with notice as above directed, and that on any day within the space of two months from the date of their first award, when the said jury shall meet and make such division.

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10 Commutation shall not give claim to the mill proprietor to relief from the land tax, nor affect right of freehold. E+W+S

And whereas the annual payment to be adjudged under this Act to the proprietor of a mill in lieu of the multures, mill services and other rights from which the lands thirled are to be thereby relieved, is meant and understood to be of equal value and a full compensation for the discharge thereof, and in no ways to take from or diminish the value of his right as proprietor: It is further hereby enacted and declared, that the discharge of the multures, mill services and other rights belonging to a proprietor of a mill, as to the whole or any part of the lands astricted to it, and the substitution of an annual payment by way of compensation in place thereof in the manner above provided for, shall afford to such proprietor no ground or pretence for claiming relief from any part of the cess or land tax payable by him in respect thereof, either where such mill stood separately valued in the cess books or where it was included in a joint or cumulo valuation with other parts of his property; and for the same reason, that it shall not in any ways affect or impair any right of freehold or qualification to elect or be elected as a member of Parliament arising from or founded upon it, either where the mill with its mill lands and multures of itself affords such qualification in respect of its valuation or old extent or where it makes part of a tenement which forms such qualification either on its valuation or as separately retoured of an extent sufficient for that purpose.

11 Thirlage of the invecta et illata may be purchased. E+W+S

And whereas there is a kind of thirlage known in the law and practice of Scotland, called a thirlage of the invecta et illata, to which sundry towns, burghs, burghs of barony, villages or other places in that part of the kingdom and the inhabitants thereof are subject, which thirlage it is expedient to allow to be purchased by the persons subject to the same: Be it therefore enacted, that if any inhabitant or inhabitants of such town, burgh, village or place, shall be desirous to purchase an exemption from the said servitude of thirlage, and all and every the services and prestations incident thereto, to which the whole town, burgh, village or place is liable, from the proprietor of such mill or mills entitled to the same, it shall be lawful and competent to them to apply in manner above mentioned to the sheriff or steward depute of the county in which such town, burgh, village or place is situate, who shall take such proceedings and summon a jury in such manner as is herein-before particularly directed, which jury shall by their verdict fix and determine the full value in money of such right of thirlage in perpetuity; on which verdict and determination the said sheriff or steward depute or substitute shall pronounce decret against the person or persons so petitioning or applying to him as aforesaid for the sum so fixed and determined by such jury; on payment of which to the proprietor of the mill, such town, burgh, village or place, or such inhabitant or inhabitants thereof, formerly subject to such thirlage, shall thenceforth be for ever freed and relieved from the same.

12 Such thirlage may be purchased notwithstanding the mill be held under a deed of entail on certain conditions. E+W+S

And such proceeding may take place and such exemption be purchased in manner aforesaid notwithstanding the mill or mills, to which such burgh, town or village is thirled, be held by the proprietor or proprietors thereof under a deed or deeds of entail; provided that the price paid for the same, in virtue of the determination of the jury and decret of the sheriff hereby directed, shall be settled and secured in like manner

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as is directed in the case of superiorities sold to the vassals of entailed estates by the ^{M1}Tenures Abolition Act, 1746.

Marginal Citations

M1 1746 c. 50.

13 If mill and lands be within different counties, application to be made to the sheriff where the mill is situate. E+W+S

And whereas it may happen that a mill and some of the lands thirled to it may be within different counties: in such case the application shall be made to the sheriff of the county in which the mill is situated, before whom the parties concerned who live without his jurisdiction may be cited by virtue of letters of supplement in common form.

14 Act not to extend where an annual payment under the name of dry multure is fixed. E+W+S

Provided always, that nothing herein-before contained shall apply to the case where a permanent annual payment, either in money or grain, is already fixed or established under the name of dry multure in lieu of the servitude of thirlage; but reserving nevertheless to either party, as well the proprietor of the dominant as of the survient tenement, to apply in manner herein-before directed for commutating or compensating, by such fixed annual payment as herein-before mentioned, all mill services and other prestations and restrictions, if any such are exigible, over and above the sum of money or grain payable in name of dry multure as aforesaid.

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Commencement Orders yet to be applied to the Thirlage Act 1799

Commencement Orders bringing legislation that affects this Act into force:

- [S.S.I. 2003/456 art. 2](#) commences (2000 asp 5)