



Conveyancing and Feudal Reform (Scotland) Act 1970

1970 CHAPTER 35

PART I

FEUDAL REFORM

Variation and discharge of land obligations

1 Variation and discharge of land obligations

- (1) The provisions of this section and of section 2 of this Act shall, without prejudice to any other method of variation or discharge, apply for the variation or discharge of any land obligation, however constituted, and whether subsisting at the commencement of this Act or constituted thereafter:

Provided that the provisions of the said sections shall not apply in relation to an obligation specified or referred to in Schedule 1 to this Act.

- (2) For the purposes of this section and of section 2 of this Act, a land obligation is an obligation relating to land which is enforceable by a proprietor of an interest in land, by virtue of his being such proprietor, and which is binding upon a proprietor of another interest in that land, or of an interest in other land, by virtue of his being such proprietor.

For the purposes mentioned in this subsection, an obligation includes a future or contingent obligation, an obligation to defray or contribute towards some cost, an obligation to refrain from doing something, and an obligation to permit or suffer something to be done or maintained.

- (3) Subject to the provisions of this section and of section 2 of this Act, the Lands Tribunal, on the application of any person who, in relation to a land obligation, is a burdened proprietor, may from time to time by order vary or discharge the obligation wholly or

partially in relation to the interest in land in respect of which the application is made, on being satisfied that in all the circumstances,

- (a) by reason of changes in the character of the land affected by the obligation or of the neighbourhood thereof or other circumstances which the Tribunal may deem material, the obligation is or has become unreasonable or inappropriate; or
 - (b) the obligation is unduly burdensome compared with any benefit resulting or which would result from its performance; or
 - (c) the existence of the obligation impedes some reasonable use of the land.
- (4) An order varying or discharging a land obligation under this section may direct the applicant to pay, to any person who in relation to that obligation is a benefited proprietor, such sum as the Lands Tribunal may think it just to award under one, but not both, of the following heads—
- (i) a sum to compensate for any substantial loss or disadvantage suffered by the proprietor as such benefited proprietor in consequence of the variation or discharge ; or
 - (ii) a sum to make up for any effect which the obligation produced, at the time when it was imposed, in reducing the consideration then paid or made payable for the interest in land affected by it;

but the Tribunal may refuse to vary or discharge a land obligation on the ground specified in subsection (3)(c) of this section if they are of the opinion that, due to exceptional circumstances related to amenity or otherwise, money would not be an adequate compensation for any loss or disadvantage which a benefited proprietor would suffer from the variation or discharge.

- (5) The power conferred by this section to vary or discharge an obligation includes power to add or substitute any such provision (not being an award of money otherwise than by way of compensation under subsection (4) of this section) as appears to the Lands Tribunal to be reasonable as the result of the variation or discharge of the obligation and as may be accepted by the applicant; and the Tribunal may accordingly refuse to vary or discharge the obligation without some such provision.
- (6) On the taking effect of an order under this section varying or discharging to any extent a land obligation, any irritant or resolute clause or other condition relating to the enforcement of the obligation shall, in relation to any act or omission occurring after the date of such taking effect, be effective (if at all) only in so far as it would have been effective if the obligation had to that extent been varied or discharged by the person entitled to enforce the obligation; and any such added or substituted provision as is referred to in subsection (5) of this section shall be enforceable in the same manner as the obligation to the variation or discharge of which it relates.

2 Provisions supplementary to section 1

- (1) On an application under section 1 of this Act, the Lands Tribunal shall give such notice thereof, whether by way of advertisement or otherwise, as may be prescribed, to the persons who, in relation to the obligation which is the subject of the application, appear to them to be either benefited or burdened proprietors, and to such other person as the Tribunal may think fit.
- (2) In an application to the Lands Tribunal under section 1 of this Act, any person who, in relation to the obligation which is the subject of the application, is either a burdened or a benefited proprietor, shall be entitled, within such time as may be prescribed, to

oppose or make representations in relation to the application, and the Tribunal shall allow any such person, and may allow any other person who appears to them to be affected by the obligation or by its proposed variation or discharge, to be heard in relation to the application.

- (3) An order made under section 1 of this Act shall take effect in accordance with such rules as may be prescribed.
- (4) Where an order made under section 1 of this Act which has taken effect is duly recorded, it shall be binding on all persons having interest.
- (5) Where a land obligation is first created, whether before or after the commencement of this Act, in a conveyance, deed, instrument or writing, no application shall be brought under section 1 of this Act in relation thereto until the expiry of two years after the date of its creation.
- (6) For the purposes of this section and of section 1 of this Act,
 - " benefited proprietor ", in relation to a land obligation, means a proprietor of an interest in land who is entitled, by virtue of his being such proprietor, to enforce the obligation ; and " burdened proprietor ", in relation to such an obligation, means a proprietor of an interest in land upon whom, by virtue of his being such proprietor, the obligation is binding; and—
 - (i) the benefited proprietor or the burdened proprietor of an interest in land held by two or more persons jointly or in common means either all those persons or any of them ;
 - (ii) the benefited proprietor or the burdened proprietor of an interest in land which is subject to a heritable security constituted by *ex facie* absolute disposition or assignation includes the person who, if the debt were discharged, would be entitled to be vested in that interest;
 - " interest in land " means any estate or interest in land which is capable of being owned or held as a separate interest and to which a title may be recorded in the Register of Sasines;
 - " land obligation " has the meaning assigned to it in section 1(2) of this Act.
- (7) Section 189 of the Housing (Scotland) Act 1966 (power of sheriff to authorise conversion of house into separate dwellings) shall cease to have effect.