



Tenures Abolition Act 1746

1746 CHAPTER 50 20 Geo 2

An Act for taking away the tenure of ward holding in Scotland, and for converting the same into blanch and feu holdings; and for regulating the casualty of non-entry in certain cases; and for taking away the casualties of single and life-rent escheats, incurred there by horning and denunciation for civil causes; and for giving to heirs and successors there a summary process against superiors; and for discharging the attendance of vassals at head courts there; and for ascertaining the services of tenants there; and for allowing heirs of tailzie there to sell lands to the Crown for erecting buildings and making settlements in the Highlands.

^{F1}Whereas it has been found by experience, that the tenure of lands in . . . ^{F2} Scotland, by ward holding, and the consequences of the same, being the casualties of ward marriage and recognition, have been much more burthensome, grievous and prejudicial to the vassals proprietors of the lands held by that tenure, than they have been beneficial to the superiors;

Textual Amendments

- F1** Act (except ss. 21, 22) repealed (S.) (*prosp.*) by [2000 asp 5](#), ss. 76(2), 77(2)(a)(d), [Sch. 13 Pt. 1](#) (with ss. 58, 62, 75)
- F2** Words repealed by [Statute Law Revision Act 1948 \(c. 62\)](#), [s. 4\(b\)](#)

Modifications etc. (not altering text)

- C1** Short title “The Tenures Abolition Act 1746” given by [Short Titles Act 1896 \(c. 14\)](#)
- C2** Certain words of enactment repealed by [Statute Law Revision Act 1888 \(c. 3\)](#) and remainder omitted under authority of [Statute Law Revision Act 1948 \(c. 62\)](#), [s. 3](#)

[1.] Tenure of ward holding taken away;

The tenure of lands or heretages in Scotland by ward holding, whether simple or taxed ward, and the casualties consequent upon the same by ward marriage and recognition, be taken away and discharged, and they are hereby taken away and discharged, from and after the twenty-fifth day of March in the year of our Lord one thousand seven

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hundred and forty-eight; any law, statute, custom or usage to the contrary hereof in any wise notwithstanding.

2 converted into blanch holding.

And that all tenures of any lands or heretages in Scotland, that are now held or liable to be held of His Majesty by ward holding, whether simple or taxed ward, are hereby enacted to be turned into blanch holding, for payment of one penny Scots at the feast or term of Whitsunday yearly, si petatur tantum, and as often as such lands or heretages shall fall in non-entry, the same shall be no longer subject or liable to the annual payment of the new extent or retour duty of such lands or heretages, but instead thereof shall be subject and liable to the annual payment of the sum of one pound Scots for every one hundred pounds Scots, of the valued rent of such lands or heretages, according to which they are now liable to pay their respective proportions of his Majesty's cess or land tax; and so proportionably for any lesser quantity than one hundred pounds Scots valuation.

3 For regulating the casualty of non-entry.

And in order to ascertain the quantum of such non-entry duty from and after the said twenty-fifth day of March, in all services upon the brief of mortancestry of any heir or heirs in such lands or heretages as aforesaid, the retour, over and above the setting forth the old and new extent of the lands, in such manner as hath been heretofore practised, shall further set forth and express the valuation of such lands and heretages as aforesaid, and the proportion above mentioned of such valuation, and no more shall be the non-entry duty of such lands or heretages, preceding the citation in the general declarator of non-entry.

4 Tenure of ward holding held of superiors converted into feu holding.

And that all tenures of any lands or heretages in Scotland, that are now held or liable to be held ward of any subject superior, whether simple or taxed ward, are hereby enacted to be turned in feu holding, for payment of a certain rent or feu duty in money, victual, cattle or otherwise, yearly, in place of the said casualties of ward holding hereby discharged, and of all services, and shall be so construed, adjudged and deemed to be from the said twenty-fifth day of March and for ever thereafter.

[^{F3}5 Court of Session to settle the recompense, and publish an act of sederunt, and determine differences in a summary way.

And in order to ascertain the quantum of the feu duty to be paid yearly, after the said twenty-fifth day of March, by the tenants of vassals of the said lands and heretages heretofore held ward to the superiors thereof, it shall and may be lawful for the Court of Session in Scotland, and they are hereby impowered and required to take into their consideration the difference in value to the vassals of the change of their holdings or tenures from ward to feu hereby enacted, and what constant annual rent or feu duty, payable to the superior, will be a reasonable satisfaction or recompense for that value or difference, and thereupon to make and publish an act of sederunt, which shall be in force, and observed by all the subjects in that part of the kingdom, unless or until the same shall be altered by a future Act of Parliament; and according to the rules prescribed in such act of sederunt, it shall and may be lawful for all and every the superiors and vassals, or parties interested, to settle and adjust betwixt themselves the

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feu duties to be hereafter payable in place of the tenures hereby abolished or altered; and in case of difference arising, it shall and may be lawful for the said Court of Session, upon application made to them by bill or petition, on behalf of or by any subject superior of such lands or heretages, or by the vassals or proprietors thereof, summarily to determine the quantum of the said annual feu duty, such as the court shall judge to be a reasonable and equitable recompence to the superior, for the change of the holding hereby enacted, after having heard both parties, or summoned the party called as defender, upon twenty-one days notice; and whatever annual payment the said Court of Session shall so modify, shall be the feu duty payable for such lands and heretages as aforesaid, to the respective superiors thereof, and all and singular their heirs and successors, and that yearly at Whitsunday, from and after the said twenty-fifth day of March, when the change of holding is hereby enacted to take place, in the same manner as if feu charters had been granted of that date to the respective vassals upon their resignation, containing such change of holding, for payment of the annual feu duties so to be modified.]

Textual Amendments

F3 [S. 5](#) repealed by [Statute Law Revision Act 1867 \(c. 59\)](#) but reproduced for the purpose of construing the remaining provisions of the Act

6 ^{X1}Vassals not to forfeit for feu duties till modifications made.

... ^{F4} and such modification being made, shall be inserted as the feu duty payable for such lands or heretages in the future renovations of the infeftments thereof, by the present vassals, their heirs or successors.

Editorial Information

X1 Unreliable marginal note

Textual Amendments

F4 Words repealed by [Statute Law Revision Act 1867 \(c. 59\)](#)

7 ^{F5}

Textual Amendments

F5 [Ss. 7, 8](#) repealed by [Statute Law Revision Act 1867 \(c. 59\)](#)

8 ^{F6}

Textual Amendments

F6 [Ss. 7, 8](#) repealed by [Statute Law Revision Act 1867 \(c. 59\)](#)

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9 No tenure of ward holding to be granted.

And no tenure of any lands or heretages by ward holding, shall hereafter be created by His Majesty, his heirs or successors, or by any other superior or proprietor of lands, or other heretages in Scotland.

10 Tenure of feu cum maritagio, &c. taken away.

And whereas there are certain lands in Scotland held by the tenure of feu cum maritagio, or with clauses de non alienando sine consensu superiorum; in all time coming, from and after the said twenty-fifth day of March, the casualty of marriage consequent upon such holding, and all such prohibitory clauses restraining the power of alienation, be taken away and discharged . . .^{F7}

Textual Amendments

F7 Words repealed by [Statute Law Revision Act 1867 \(c. 59\)](#)

11 Casualties of single and life-rent escheats incurred by horning and denunciation for civil causes taken away.

And whereas the casualties of single and life-rent escheat, consequent upon the process competent by the law of Scotland, for recovering payment of civil debts, or performance of obligations, have, by experience, been found highly rigorous, and liable to be abused; from and after the said twenty-fifth day of March, the casualties of single escheat, heretofore incurred by horning and denunciation of the debtor in any civil debt or obligation, and of life-rent escheat, heretofore incurred by such debtor so denounced, continuing for a year and day unrestored or unrelaxed, be, and the same are hereby taken away and discharged for ever; and that from and after the said twenty-fifth day of March, no single escheat or life-rent escheat shall become forfeited, or be consequent upon any such process as is before mentioned; any law, custom or usage to the contrary hereof in any wise notwithstanding.

12^{F8}

Textual Amendments

F8 [Ss. 12, 13](#) repealed (S.) by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), s. 108(3), [Sch. 8](#)

13^{F9}

Textual Amendments

F9 [Ss. 12, 13](#) repealed (S.) by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), s. 108(3), [Sch. 8](#)

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Textual Amendments

F10 Ss. 14, 15 repealed by [Crown Estates Act 1961 \(c. 55\)](#), [Sch. 3 Pt. I](#)

15 **F11**

Textual Amendments

F11 Ss. 14, 15 repealed by [Crown Estates Act 1961 \(c. 55\)](#), [Sch. 3 Pt. I](#)

16 Possessors of tailzied estates impowered to sell the superiorities.

And whereas the enfranchising of vassals of subject superiors, by causing them to become immediate vassals of the crown, is a matter of publick benefit which ought to be encouraged; it shall and may be lawful for any person seised in, or possessed of a tailzied estate in Scotland, comprehending lands or superiorities of vassals, under or holding of him, to sell to such vassals, or any of them, the superiorities over their respective lands, at such prices as the parties shall agree for, and thereupon to resign such lands for new infeftment, to be granted to such buyer of his own superiority, which shall be good and valid; any law, charter, tailzie or other act or deed to the contrary notwithstanding.

17 Purchase money how to be applied.

Provided always, that the monies paid as the price of such superiority, or superiorities, being part of a tailzied estate, shall be laid out and settled to the same uses, and with the same limitations and restrictions, as such superiority was settled before the sale thereof as aforesaid, or applied for payment of the debts, if any such there be, of the maker of the intail, or other debts that are effectual burdens on the tailzied estate, not contracted by such vendor himself, and for that purpose the monies shall be paid into the hands of trustees, who shall be appointed by the vendor of such superiority or superiorities, and the purchaser or purchasers thereof respectively; and such trustees, and the survivor and survivors of them, and the executors and administrators of such survivor, shall lay out the monies arising from such sale, in the purchase of other lands or heretages, and settle, or procure the same to be settled as aforesaid, or such monies to be applied for payment of debts on the tailzied estate in the manner herein before directed.

18 Vassals discharged from attending at head courts.

And whereas the ancient usage of the vassals of the King, and other subject superiors, being obliged to give suit and presence, or to appear at head courts at certain times of the year, has of a long time been useless, and therefore ought not to be continued; from and after the said twenty-fifth day of March, no proprietor of lands in Scotland, holding of the King, or of any subject superior, shall be obliged to attend, appear, and give suit and presence by himself, or his procurator, at any head court, or be liable to any fine or penalty, for default of attendance at such head court; any law, charter, contract, custom or usage to the contrary in any wise notwithstanding.

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19 Vassals to attend if summoned on juries.

Provided always, that nothing herein contained shall exempt any proprietors of lands, being vassals of the King, or any subject superior, from attendance at any court to which he is subject, being lawfully and specially summoned for that effect, to serve as a juryman upon trials, or for any other lawful purpose whatsoever.

20 F12

Textual Amendments

F12 [S. 20](#) repealed by [Statute Law Revision Act 1867 \(c. 59\)](#)

21 Tacksmen discharged from all services, &c. not mentioned in the tack, &c.

And whereas it hath been frequently practised in Scotland, to lett lands to tenants or tacksmen, reserving or expressing, over and above the certain rents and duties payable for the same, services used and wont, or services indefinitely, or other general words of the like nature, without specifying or ascertaining the same; which practice is liable to be abused, is productive of disputes between landlord and tenant, and subject to divers inconveniences; from and after the first day of July in the year of our Lord one thousand seven hundred and forty-seven, no tenant or tacksmen of any lands or heretages in Scotland, by virtue of any lease or tack which shall be made in writing, or by verbal agreement, tacit relocation, or otherwise, after the said first day of July, or by virtue of the prorogation of any lease or tack made before the said first day of July, or any assignee of any such lease or tack, shall be obliged or liable to perform any services whatsoever to his heretor or landlord other than such as shall be expressly and particularly reserved and specified, and the number and kinds thereof enumerated and ascertained in some written lease or tack, or by some agreement made in writing, and signed by the parties thereto, or some persons authorized by them, any former law or usage to the contrary notwithstanding.

22 Services due to mills reserved.

Provided always, that nothing herein contained relating to services to be performed by any tenant or tacksmen, after the said first day of July, shall extend or be construed to extend, to any services by law or custom due to mills, or any matter or thing relative thereto.

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Commencement Orders yet to be applied to the Tenures Abolition Act 1746

Commencement Orders bringing legislation that affects this Act into force:

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