

*These notes relate to the Abolition of Feudal Tenure etc. (Scotland)
Act 2000 (asp 5) which received Royal Assent on 14 July 2000*

ABOLITION OF FEUDAL TENURE ETC. (SCOTLAND) ACT 2000

EXPLANATORY NOTES

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Commentary on Sections

Part 4: Real Burdens

Section 28: Enforcement of conservation burden

124. The effect of *section 28* is that on the date of abolition of the feudal system, a feudal burden in respect of which a notice has been registered under section 27 (notice preserving right to enforce conservation burden) is converted into a conservation burden. The burden will be enforceable by the person who was the superior immediately before the date of abolition, provided that such a person is a conservation body or the Scottish Ministers. Where a conservation body or the Scottish Ministers have not completed title, the saving provisions will operate in circumstances where the conservation body or the Scottish Ministers would be able to enforce the burden if the body in question or they were to complete title. If the superior is not such a conservation body, or the Scottish Ministers, conversion will not take place and the burden will fall under section 17 (extinction of superior's rights). Unlike the case of neighbour burdens or common facilities burdens, a conservation body and the Scottish Ministers will be presumed to have an interest to enforce a conservation burden.
125. *Subsection (2)* makes it clear that if a conservation body has registered a notice preserving the right to enforce a conservation burden after the appointed day of abolition, but has conveyed the superiority to another conservation body or to the Scottish Ministers prior to the appointed day, then the successor conservation body or the Scottish Ministers as the case may be will be able to enforce the conservation burden after the appointed day. Similarly, if the Scottish Ministers have registered a notice but conveyed the superiority to a conservation body prior to the appointed day, then the conservation body will be able to enforce the burden after the appointed day.