

*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

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## EXPLANATORY NOTES

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#### *Commentary on Sections*

#### **Part 4: Real Burdens**

#### ***Section 23: Reallotment of real burden affecting facility of benefit to other land etc.***

109. Common facilities burdens regulate the management, maintenance or use of a common facility. They are of the same nature as the equivalent non-feudal real burdens and similarly, in certain circumstances, are enforceable by the owners of land which they are designed to protect. The extra-feudal feature is that they are also enforceable by the superior because they are imposed in a feu deed. In some cases, they can be drafted in such a way that only the superior has a right to enforce them. Without express provision, these burdens and rights would be extinguished on abolition. Common facilities in housing estates and tenements would be particularly at risk. This section transfers the superior's enforcement rights to the owners of those properties which benefit from the common facility in the event that they do not already have this right. The effect will be to convert a feudal burden which could be enforced only by the superior into an ordinary real burden, mutually enforceable within the tenement or housing estate.
110. *Subsection (1)* transfers a superior's enforcement rights to the owners of the properties which benefit from the common facility. *Subsection (1)* creates enforcement rights only where none exist already. If, as often happens in practice, the properties benefiting from the facility are already subject to the burden but have mutual enforcement rights, section 23 will not be necessary and will not add anything.
111. *Subsection (2)* extends the effect of the section to burdens regulating the provision of services to other property (for example factoring or heating).
112. *Subsection (3)* excludes burdens which constitute maintenance obligations (for example in relation to roads and sewers) from the operation of subsection (1) which have been taken over by a local or other public authority since the maintenance of the common facility is covered already without the need to transfer the right to enforce the burden.
113. *Subsection (4)* gives some examples of common facilities. The list is not intended to be comprehensive.