



Abolition of Feudal Tenure etc. (Scotland) Act 2000

2000 asp 5

PART 4

REAL BURDENS

Reallotment etc.

18 Reallotment of real burden by nomination of new dominant tenement

(1) Where—

- (a) a feudal estate of *dominium utile* of land is subject to a real burden enforceable by a superior of the feu or which would be so enforceable were the person in question to complete title to the *dominium directum*; and
- (b) at least one of the conditions set out in subsection (7) below is met, the superior may, before the appointed day, prospectively nominate other land (being land of which he has right to the sole *dominium utile* or sole allodial ownership), or any part of that other land, as a dominant tenement by duly executing and registering a notice in, or as nearly as may be in, the form contained in schedule 5 to this Act.

(2) The notice shall—

- (a) set out the title of the superior;
- (b) describe, sufficiently to enable identification by reference to the Ordnance Map, both the land the *dominium utile* of which is subject to the real burden (or any part of that land) and the land (or part) nominated;
- (c) specify which of the conditions set out in subsection (7) below is (or are) met;
- (d) set out the terms of the real burden; and
- (e) set out the terms of any counter-obligation to the real burden if it is a counter— obligation enforceable against the superior.

- (3) For the purposes of subsection (1) above a notice is duly registered only when registered against both tenements described in pursuance of subsection (2)(b) above.

Status: This is the original version (as it was originally enacted).

- (4) Before submitting any notice for registration under this section, the superior shall swear or affirm before a notary public that to the best of the knowledge and belief of the superior all the information contained in the notice is true.
- (5) For the purposes of subsection (4) above, if the superior is—
- (a) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in that subsection, then a legal representative of the superior may swear or affirm;
 - (b) not an individual, then any person authorised to sign documents on its behalf may swear or affirm;
- and any reference in that subsection to a superior shall be construed accordingly.
- (6) If subsections (1) to (5) above are complied with and immediately before the appointed day the real burden is still enforceable by the superior (or by his successor) or would be so enforceable, or still so enforceable, were the person in question to complete title to the *dominium directum* then, on that day—
- (a) the land (or part) nominated shall become a dominant tenement; and
 - (b) the land the *dominium utile* of which was subject to the real burden (or if part only of that land is described in pursuance of subsection (2)(b) above, that part) shall be the servient tenement.
- (7) The conditions are—
- (a) that the land which by virtue of this section would become the dominant tenement has on it a permanent building which is in use wholly or mainly as a place of human—
 - (i) habitation; or
 - (ii) resort,
 and that building is, at some point, within one hundred metres (measuring along a horizontal plane) of the land which would be the servient tenement;
 - (b) that the real burden comprises—
 - (i) a right to enter, or otherwise make use of, the servient tenement; or
 - (ii) a right of pre-emption or of redemption; or
 - (c) that the land which by virtue of this section would become the dominant tenement comprises—
 - (i) minerals; or
 - (ii) salmon fishings or some other incorporeal property,
 and it is apparent from the terms of the real burden that it was created for the benefit of such land.
- (8) This section is subject to sections 41 and 42 of this Act.