



Abolition of Feudal Tenure etc. (Scotland) Act 2000

2000 asp 5

PART 4

REAL BURDENS

Reallotment etc.

19 Reallotment of real burden by agreement

(1) Where 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* the superior may, before the appointed day—

- (a) serve notice in, or as nearly as may be in, the form contained in schedule 6 to this Act, on the person who has right to the feu that he seeks to enter into an agreement with that person under this section prospectively nominating other land (being land of which the superior has right to the sole *dominium utile* or sole allodial ownership), or any part of that other land, as a dominant tenement;
- (b) enter into such an agreement with that person; and
- (c) duly register that agreement;

but if they think fit they may, by the agreement, modify the real burden or any counter— obligation to the real burden if it is a counter-obligation enforceable against the superior (or both the real burden and any such counter-obligation).

(2) The notice shall—

- (a) set out the title of the superior;
- (b) describe 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) set out the terms of the real burden; and
- (d) set out the terms of any such counter-obligation as is mentioned in subsection (1) above.

- (3) An agreement such as is mentioned in paragraph (b) of subsection (1) above shall be a written agreement—
- (a) which expressly states that it is made under this section; and
 - (b) which includes all the information, other than that relating to service, required to be set out in completing the notice the form of which is contained in schedule 6 to this Act.
- (4) For the purposes of subsection (1)(c) above an agreement is duly registered only when registered against both tenements described in pursuance of subsection (2)(b) above.
- (5) If subsections (1)(b) and (c), (3) and (4) 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.
- (6) A person may enter into an agreement under this section even if he has not completed title to the *dominium utile* of the land subject to the real burden, or as the case may be title to the *dominium directum* of that land or to the *dominium utile* of the land nominated (or, if the land nominated is allodial land, to the land nominated), provided that, in any case to which section 15(3) of the Land Registration (Scotland) Act 1979 (c. 33) (simplification of deeds relating to registered interests) does not apply, he deduces title, in the agreement, from the person who appears in the Register of Sasines as having the last recorded title to the interest in question.
- (7) This section is subject to section 42 of this Act.