



Abolition of Feudal Tenure etc. (Scotland) Act 2000

2000 asp 5

PART 4

REAL BURDENS

Reallotment etc.

20 Reallotment of real burden by order of Lands Tribunal

- (1) Where but for paragraph (b) of subsection (1) of section 18 of this Act a superior could proceed under that subsection prospectively to nominate land (in this section referred to as the ("prospective dominant tenement" he may, provided that he has first, in pursuance of section 19 of this Act, attempted to reach agreement as respects the real burden in question with the person who has right to the feu, apply to the Lands Tribunal for an order under subsection (7) of this section; but such an application is competent only if made within such period as the Scottish Ministers may prescribe by order (being a period which ends before the appointed day).
- (2) An applicant under subsection (1) above shall include in his application a description of the requisite attempt to reach agreement.
- (3) After sending or delivering to the Lands Tribunal an application under subsection (1) above, the superior may, within—
 - (a) 42 days; or
 - (b) such longer period of days (being a period which ends before the appointed day) as the Lands Tribunal may allow if it is satisfied that there is good cause for so allowing,duly execute and register a notice in, or as nearly as may be in, the form contained in schedule 7 to this Act; and section 17(1) of this Act shall have no effect as regards a real burden in respect of which such notice has been so executed and registered.
- (4) The notice shall—
 - (a) set out the title of the superior;

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- (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 prospective dominant tenement;
 - (c) set out the terms of the real burden; and
 - (d) set out the terms of any counter-obligation to the real burden if it is a counter — obligation enforceable against the superior.
- (5) For the purposes of this section, a notice is duly registered only when registered against both tenements described in pursuance of subsection (4)(b) above; and if it is so registered and immediately before the appointed day—
- (a) 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*; and
 - (b) no order under subsection (7) below has been registered under subsection (11) below in respect of the application,
- then on that day the prospective dominant tenement shall, for the transitional period, become the dominant tenement and the land the *dominium utile* of which is subject to the real burden (or, if part only of that land is described under paragraph (b) of subsection (4) above, that part) shall, for the transitional period, be the servient tenement.
- (6) The reference in subsection (5) above to the transitional period is to the period beginning on the appointed day and ending on—
- (a) the day on which an order under subsection (7) below is registered under subsection (11) below in respect of the application; or
 - (b) if no such order is so registered, such day later than the appointed day as the Scottish Ministers may by order specify (that later day being in this Act referred to as the “specified day”.
- (7) If, on an application under subsection (1) above as respects which a notice has been duly registered—
- (a) the Lands Tribunal is satisfied that, were the real burden to be extinguished, there would be substantial loss or disadvantage to the applicant as owner (taking him to be such) of the dominant tenement, the Tribunal may order that, subject to subsection (9) of this section—
 - (i) if the order can be and is registered before the appointed day, then on that day the prospective dominant tenement shall become the dominant tenement and the land the *dominium utile* of which is subject to the real burden (or, if part only of that land is described under paragraph (b) of subsection (4) above, that part) shall be the servient tenement; or
 - (ii) the dominant tenement for the transitional period shall, after that period, continue to be the dominant tenement and the servient tenement for the transitional period shall, after that period, continue to be the servient tenement; or
 - (b) the Lands Tribunal is not so satisfied, it may order that the real burden shall be extinguished or shall cease to be enforceable by the superior or former superior as the case may be.
- (8) Where in respect of the application—
- (a) an order under paragraph (a) of subsection (7) above is registered—

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- (i) before the appointed day and immediately before that 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; or
 - (ii) on or after the appointed day and immediately before the day of registration the real burden is still enforceable by the former superior (or by his successor) or would be so enforceable, or still so enforceable, as mentioned in sub-paragraph (i) above, then on the day of registration,

the prospective dominant tenement shall become the dominant tenement and the land the *dominium utile* of which was subject to the real burden (or, if part only of that land is described under paragraph (b) of subsection (4) above, that part) shall be the servient tenement;
 - (b) an order under paragraph (b) of subsection (7) above is registered—
 - (i) before the appointed day, the real burden shall, if immediately before that day it is enforceable by, and only by, the superior or his successor or would be so enforceable were the person in question to complete title to the *dominium directum*, on that day be extinguished and if it is otherwise enforceable then on and after that day it shall not be enforceable by the former superior or his successor; or
 - (ii) on or after the appointed day, the real burden shall, if immediately before the day of registration it is enforceable by, and only by, the former superior or his successor or would be so enforceable as mentioned in sub-paragraph (i) above, on the day of registration be extinguished and if it is otherwise enforceable then on and after the day of registration it shall not be enforceable by the former superior or his successor; or
 - (c) the specified day occurs and no order under subsection (7) above has yet been made and registered, the real burden shall, if immediately before the specified day it is enforceable by, and only by, the former superior or his successor or would be so enforceable as mentioned in sub-paragraph (i) of paragraph (b) above, on that day be extinguished and if it is otherwise enforceable then on and after that day it shall not be enforceable by the former superior or his successor.
- (9) An order under subsection (7)(a) above may modify the real burden or any counter — obligation to the real burden if it is a counter-obligation enforceable against the applicant (or both the real burden and any such counter-obligation).
- (10) The decision of the Lands Tribunal on an application under subsection (1) above shall be final.
- (11) An order under subsection (7) above shall forthwith be extracted and registered by the Lands Tribunal against both tenements described in pursuance of subsection (4) (b) above; and the expenses of registration shall be borne by the applicant.
- (12) Subsections (2) and (3) of section 17 of this Act shall apply in relation to real burdens extinguished or rendered unenforceable by virtue of this section as they apply in relation to real burdens extinguished or so rendered by subsection (1) of that section with the substitution, if the extinction or rendering is after the appointed day, for each reference in them to that day, of a reference to the day which ends the transitional period.

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- (13) A person opposing an application made under subsection (1) above incurs no liability, unless in the opinion of the Lands Tribunal his actings are vexatious or frivolous, in respect of expenses incurred by the applicant.
- (14) This section is subject to sections 41 and 42 of this Act.
- (15) 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.
- (16) For the purposes of subsection (15) 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 the references in that subsection to the superior shall be construed accordingly.