

ABOLITION OF FEUDAL TENURE ETC. (SCOTLAND) ACT 2000

EXPLANATORY NOTES

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Commentary on Sections

Part 4: Real Burdens

Section 17: Extinction of superior's rights

69. *Section 17* sets out the general rule that a superior's rights in relation to the enforcement of feudal real burdens are extinguished on the appointed day for the abolition of the feudal system.
70. *Undersubsection (1)* any real burden enforceable only by a superior is extinguished on the appointed date of abolition. A burden which a third party (such as a neighbour) can also enforce survives, but the (former) superior loses his rights. Sections 18 (reallotment of real burden by nomination of new dominant tenement), 19 (reallotment of real burden by agreement), 20 (reallotment by real burden by order of Lands Tribunal), 23 (reallotment of real burden affecting facility of benefit to other land etc.), 27 (notice preserving right to enforce conservation burden), 28 (enforcement of conservation burden) and 60 (preserved right of Crown to maritime burdens) set out exceptions to this rule where a former feudal real burden may survive extinction but as an ordinary real burden without any of the feudal trappings. It should be noted that under section 75 (saving for contractual rights), a former superior will retain any purely contractual rights. Like other conveyances, feudal deeds contain contractual terms which, on registration, become real burdens. In a dispute between the original parties to a feudal relationship, a condition in a feu which is valid as a real burden will also be valid as a contractual term. Even after abolition, a feudal superior will be able to enforce the terms of a feudal deed against the original vassal in so far as such terms are contractual. Section 17 (extinction of superior's rights) extinguishes only the real burden. Successive vassals are subject only to the real burden, not the contractual terms between the original parties.
71. Under the general law, an obligation, once extinguished, is extinguished for all purposes. When feudal burdens are extinguished, it should therefore cease to be possible to sue in respect of past breaches. *Subsection (2)* prevents superiors from attempting to enforce burdens extinguished under subsection (1). It makes no difference that the breach occurred before the appointed day for abolition. Subsection (2) makes it clear that an interdict, or order for specific implement, will be deemed to have been abandoned on the date of abolition. *Subsection (3)* makes it clear that proceedings in relation to irritancy (for which see section 53 - discharge of rights of irritancy), damages and payment of money are not however affected by this section (see also section 54(3) - extinction of superior's rights and obligations qua superior). If a burden is saved under the Act then section 17 will not affect any proceedings or court order in relation to that

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

burden. If the superior is unable to save that burden under the Act he will not continue to have enforcement rights by other means.