

ABOLITION OF FEUDAL TENURE ETC. (SCOTLAND) ACT 2000

EXPLANATORY NOTES

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Commentary on Sections

Part 4: Real Burdens

Section 43: Notices and agreements under certain sections: Extent of Keeper's duty

157. The Keeper has to decide whether to accept for recording or registration the deeds which are submitted to him. In relation to the Sasine Register, the Keeper's concern is limited to whether the deed presented for recording is of a type appropriate to the Register and whether it is formally valid. By contrast, all deeds are carefully examined before registration in the Land Register and if necessary the Keeper calls for further information or evidence. A notice would be rejected if the Keeper was not satisfied as to its validity. There are, however, certain matters which the Keeper could not be reasonably expected to check. These are:

- **whether a burden was enforceable by a superior in circumstances where a former superior is permitted to register notices or an agreement which will have the effect of either preserving a feudal burden as a non-feudal burden or reserving the right to claim compensation for the loss of a development value burden - in order for these notices or agreement to be competent, the real burden in question must be enforceable by the superior;**
- **whether a copy of the notice has been duly sent to the vassal;**
- **whether, in the case of a notice converting a feudal burden to a neighbour burden, the requirement of a building within 100 metres of the burdened property has been met;**
- **whether, in the case of a burden saved by an agreement, the notice requirement has been complied with;**
- **whether, in the case of a notice of an application to the Lands Tribunal to save a burden on substantial loss or disadvantage, an attempt was made to save it by agreement or that substantial loss or disadvantage does arise - the Keeper also has no duty to check whether the relevant notice has been executed and registered within the specified period;**
- **whether, in the case of a notice reserving a right to claim compensation, the statements made about development value, and the reduction in consideration are true.**

158. Accordingly this section provides that the Keeper has no duty in relation to these matters. The superior will have sworn or affirmed before a notary public that the

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

information contained in the notice is true. The vassal may be expected to scrutinise any notice received and will be in a much better position than the Keeper to check the information in it. (Section 42(1) allows an invalid notice to be challenged.) Section 43 therefore relieves the Keeper of the need to verify the above facts which would in practice be difficult for him to check. Although the section applies to both registers, it is of importance mainly in relation to the Land Register.

159. *Subsection (3)* provides that it will not be a matter for the Keeper to determine whether or not a burden is actually enforceable, and by whom, immediately before the appointed day or the day of registration of an order of the Lands Tribunal. This is a further provision resulting from the policy that the Keeper should not be expected to verify information which he could not check from documentation submitted to him in connection with an application for registration.