

ABOLITION OF FEUDAL TENURE ETC. (SCOTLAND) ACT 2000

EXPLANATORY NOTES

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Commentary on Sections

Part 5: Entails

Section 50: Disentailment on appointed day

172. This section abolishes entails which were at one time commonly used to keep lands in the same family for generations. A feudal grant of land would be made in such a way that the succession to it was strictly regulated and protected. For example, a deed might provide that on the death of the owner the land was to pass to his eldest son or other male heir and so on for subsequent owners. At any one time there would be an heir in possession and an heir apparent who could expect to succeed to the lands on surviving the heir in possession. The stipulated line of succession would be secured by provisions whereby any attempt by the heir in possession to interfere with the succession or to reduce the extent or value of the estate (for example, by selling or feuing or burdening the property) resulted in the lands passing immediately to the next heir. The disadvantages of tying up land by strict entails quickly became apparent and a succession of statutes was passed to increase the powers of the heir in possession to deal with the land. Finally, the Entail (Scotland) Act 1914 prohibited the creation of new entails after 10 August 1914. The Scottish Law Commission think that there are few, if any, entails still in existence but there are 20 statutes still in force to deal with an area of law which has become obsolete.
173. *Subsection (1)* provides for the automatic disentailing of land on the appointed date of abolition.
174. *Subsection (2)* provides that the effect of automatic disentailing is to be the same as the effect of a duly recorded instrument of disentail. This means that the destination and the titles will remain in force as a special destination, until altered, but the restrictions on the freedom of the owner of the property to deal with it as his own property will fall away. Accordingly the owner can sell the property or alter the succession to it.

Section 51: Compensation for expectancy or interest of apparent or other nearest heir in an entailed estate

175. Under sections 1 and 2 of the Entail Amendment Act 1848, any heir of entail in possession born after the date of the entail can now disentail without any consent or payment of compensation. Only if the heir in possession was born before the date of the entail (which must have been before 10 August 1914 - the date of the prohibition of the creation of new entails under the Entail (Scotland) Act 1914) could there be any question of compensation. It is therefore unlikely that there will be any heirs in a position to claim compensation for the effects of automatic disentailing on their

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

prospects of succeeding to the entailed estates. This section provides a mechanism for assessing compensation and having it secured on the land.

Section 52: Closure of Register of Entails

176. This section provides for the Register of Entails to be closed by the Keeper of the Registers of Scotland and transmitted to the Keeper of the Records of Scotland for preservation.