



Abolition of Feudal Tenure etc. (Scotland) Act 2000

2000 asp 5

PART 4

REAL BURDENS

Reallotment etc.

23 Reallotment of real burden affecting facility of benefit to other land etc

- (1) Subject to subsection (3) below, where, immediately before the appointed day, a real burden enforceable by a superior regulates the maintenance, management, reinstatement or use of heritable property which constitutes, and is intended to constitute, a facility of benefit to other land (examples of property which might constitute such a facility being, without prejudice to the generality of this subsection, set out in subsection (4) below) then—
- (a) the land benefited;
 - (b) the heritable property which constitutes the facility,
- shall, if on the appointed day it is not a dominant tenement, become a dominant tenement on that day (the servient tenement being the land the *dominium utile* of which was subject to the real burden immediately before that day).
- (2) Where, immediately before the appointed day, a real burden enforceable by a superior regulates the provision of services to land other than land the *dominium utile* of which is subject to the real burden, then the land to which the services are provided shall, if on the appointed day it is not a dominant tenement, become a dominant tenement on that day (the servient tenement being as mentioned in subsection (1) above).
- (3) Subsection (1) above does not apply to a real burden in so far as that burden constitutes an obligation to maintain or reinstate which has been assumed—
- (a) by a local or other public authority; or
 - (b) by, under or by virtue of any enactment, by a successor body to any such authority.
- (4) The examples referred to in subsection (1) above are—

Status: This is the original version (as it was originally enacted).

- (a) a common part of a tenement building;
- (b) a common area for recreation;
- (c) a private road;
- (d) private sewerage;
- (e) a boundary wall.