

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
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Conversion of ultra-long leases into ownership recommended

People who are tenants of ultra-long leases could have their rights converted into ownership under draft legislation published today.

The Scottish Law Commission's recommendations to Scottish Ministers for the conversion of ultra-long leases to ownership are published today. In all but name, the landlords in such leases are feudal superiors, and the tenants are feudal vassals. The recommendations would, if enacted, be an appropriate follow-up to the Abolition of Feudal Tenure etc. (Scotland) Act 2000.

A significant number of properties in Scotland are held on these extremely long leases, or "tacks", with a term of, say, 999 years. A person holding property under such a lease resembles an owner. Yet in strict law that person is not the owner. The Commission's draft Bill would bring law and reality into line by converting such leases into ownership.

The Commission's scheme is modelled on the scheme contained in the Abolition of Feudal Tenure etc. (Scotland) Act 2000 for the conversion of feus into ownership, an Act which came fully into force in 2004 and which followed the Commission's report and draft Bill on Abolition of the Feudal System.

Ultra-Long Leases

A lease is not "ultra-long" in the sense meant here unless it was granted for more than 175 years and still has more than 100 years to run. Typically such leases have several hundred years left to run. In that respect they are barely distinguishable from feus. Functionally also there is little difference between the two. Both provide an income stream, often very small, to the landlord/superior and both allow the imposition of use restrictions and other obligations on the vassal or tenant. In both cases it is the vassal or tenant who is the owner in the everyday sense of that term.

An ultra-long lease suffers from the disadvantages already familiar from feus. The hierarchical structure of leases and subleases is needlessly complex. In some cases a lease may be vulnerable to unilateral termination by the landlord, without compensation, for breach of the terms of the lease, such as non-payment of rent. The conditions may allow an inappropriate degree of control by the landlord. It may allow the opportunity to charge for waivers. In the case of feus such disadvantages were considered sufficient grounds for

conversion into ownership. In the Commission's view they are also sufficient grounds for conversion of ultra-long leases into ownership.

The Abolition of Feudal Tenure etc. (Scotland) Act 2000 removed most of the hierarchical nature of land tenure in Scotland. The present recommendations would complete that process, while allowing the continued use of leases of reasonable duration. The reform would also follow logically from the prohibition on new leases of more than 175 years contained in the Act of 2000.

The draft Bill follows closely the scheme for conversion of feus set out in the Act of 2000. The scheme would be automatic, so that tenants would not need to do anything. But tenants would have the right to opt-out. On conversion the tenant would become owner. The conditions contained in the lease would be extinguished, but with some exceptions. For example conditions concerned with maintenance and use of common facilities or the provision of services would survive, and there would be an option to the landlord to preserve certain conditions for the benefit of neighbouring land. Special provision is made for servitudes and sporting rights. The landlord would be entitled to compensation, calculated as a multiplier of the rent. In some cases additional compensation would also be due. In most cases, and possibly in all cases, the amount of compensation would be small; but a tenant who was not willing to pay could opt out.

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Rt Hon Lord Eassie, a Court of Session judge. The other Commissioners are Professor George Gretton, Professor Gerard Maher QC, Professor Joseph Thomson and Colin Tyre QC. The Chief Executive is Michael Lugton.
2. Further information can be obtained by contacting John Dods, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gov.uk).
3. The paper may also be viewed on our website at www.scotlawcom.gov.uk or purchased from TSO Scotland Bookshop.