



Scottish Law Commission

promoting law reform

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
ON WEDNESDAY 24 NOVEMBER 2004

REVOLUTION IN PROPERTY LAW ON 28 NOVEMBER 2004

28 November 2004 sees the coming into effect of fundamental and far-reaching changes to property law in Scotland.

1. The legislation which makes these changes – the Abolition of Feudal Tenure etc. (Scotland) Act 2000, the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004 – is all based on the work of the Scottish Law Commission. These Acts have formed a significant part of the legislative business of the Scottish Parliament since it was established in 1999 and they will have considerable practical impact on all who own or rent property in Scotland.

2. Professor Kenneth Reid, the Commissioner who led the work that culminated in this reform, commented “The Scottish Law Commission is uniquely well-placed to undertake fundamental reforms of the law. It has the resources and expertise to engage in largescale projects running over a number of years. Of all the projects which the Commission has undertaken in its 40 years of existence, this new reform is one of the most ambitious and most technically demanding. It amounts to the re-writing of a substantial part of our law of property.”

3. He continued “Property law is one of the building blocks of our law. Its importance to the citizen is self-evident. A change in property law of this magnitude is therefore a major event in the history of the law in Scotland. With this reform, property law breaks free from its feudal roots. The new law will be simpler, more coherent, and more suited to the conditions of modern life.”

Detail of the reforms

4. Currently, land and buildings are held under feudal tenure. They cannot be owned in the same way as a car or a book. Instead the 'owner' of land is no more than a feudal 'vassal', holding the land from a feudal 'superior' and, ultimately, from the Crown. On 28 November this medieval system, first introduced more than 800 years ago, will come to an end by virtue of the Abolition of Feudal Tenure etc. (Scotland) Act 2000. Vassals will become owners. Superiors will disappear. The change is of more than symbolic importance,

for feudal superiors will lose such rights as they still have to control the use and development of land.

5. Feudal abolition is accompanied by new legislation on title conditions and on tenements and other flatted property. Title conditions are conditions contained in the title deeds of land and buildings. Typically they impose restrictions as to use as well as providing for maintenance of shared parts such as the roof of a block of flats. Title conditions are enforceable among neighbours. The Title Conditions (Scotland) Act 2003 reforms the law and expresses it in modern statutory language. It reasserts the rights of owners within communities (such as blocks of flats and housing estates) to ensure that the conditions are complied with by other owners. And it provides new and improved methods of removing ageing and obsolete conditions.

6. Of the three Acts, the Tenements (Scotland) Act 2004 is likely to have the greatest practical impact. It applies to all flatted property, old and new. At the moment, the management of a tenement (a building divided into separate flats or apartments) is at the mercy of the title deeds. If the deeds are well drafted, there will be a proper system for management and maintenance. But quite often the deeds are inadequate. This is especially true for older buildings. And in such cases it can be almost impossible to have repairs carried out. The new law supplements inadequate title deeds. If a majority of owners want a repair carried out, that decision will in future be binding on everyone, even on those who disagree with the decision. The Act allows the money to be collected in at once, and for the repair then to go ahead. And under the Act everyone must pay a fair share of common repairs, including repairs to the roof.

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 Lord Eassie, a senior Scottish judge. The other Commissioners are Professor Gerard Maher QC, Professor Kenneth G C Reid, Professor Joseph M Thomson and Mr Colin J Tyre QC.

2. The reports by the Scottish Law Commission which led to these reforms are –

Report on *The Law of the Tenement* (Scot Law Com No 162, 1998)
Report on *Abolition of the Feudal System* (Scot Law Com No 168, 1999)
Report on *Real Burdens* (Scot Law Com No 181, 2000).

These are available on the Commission's website at www.scotlawcom.gov.uk.

3. Further information can be obtained by contacting Mr John Dods, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gov.uk).