

ANGUS COUNCIL

PERSONNEL AND PROPERTY COMMITTEE - 17 OCTOBER 2000
POLICY AND RESOURCES COMMITTEE - 24 OCTOBER 2000

ABOLITION OF FEUDAL TENURE ETC (SCOTLAND) ACT 2000

REPORT BY THE DIRECTOR OF LAW AND ADMINISTRATION

ABSTRACT

The purpose of this Report is to advise members of the legislative changes brought about by the Abolition of Feudal Tenure etc (Scotland) Act 2000.

1. RECOMMENDATION

The Committees are recommended to note the terms of this Report and the implications of the Act and that reports on individual transactions affected by the Act will be submitted.

2. INTRODUCTION AND BACKGROUND TO THE REFORMS

The Abolition of Feudal Tenure etc (Scotland) Act received Royal Assent on 9 June 2000. This legislation will completely change the way in which property is owned in Scotland. The changes in the Act also mean that the Council will require to look at the way in which property is disposed of by the Council. There will be a period of approximately two–three years from the date of Royal Assent until the main provisions of the Act come into force to allow time to implement the changes which will be required.

The feudal system of land holding in Scotland has been under review for a number of years. Considerable reforms were made to the feudal system in the 1970's and since then, small piecemeal reforms have taken place. With the advent of the Scottish Parliament and the desire to carry out sweeping land reform, the feudal system will be abolished completely in the next few years.

3. THE PRESENT SYSTEM

Scotland is the last legal system to have held onto feudalism. All land was originally owned by the Crown. In order to secure the services of lords and knights in fighting wars, the crown would "feu" an area of ground to a lord or nobleman in exchange for military service when required. In turn the lord would divide his land into smaller feus and so on down the line to the smallest dwelling. As the need for military service dwindled, this was replaced with payment of feu duties.

Today, feu duties are almost obsolete. However, land is still sold by Feu Disposition. The benefit of granting a feu disposition is that the seller becomes the Superior and can impose burdens in the feu disposition, eg to prohibit further development on the site without the Superior's consent or prohibit certain types of behaviour on the ground.

Angus Council almost always grants feu dispositions when ground or houses are sold. Burdens are imposed in the deed providing for the use of the land or buildings or prohibiting future development etc. By granting feu dispositions, the Council retain an interest in the property as Superior. This provides the Council with an interest to enforce any burdens imposed on land that has been sold, by virtue of the Council being the Superior. With the abolition of the feudal system, the Council will no longer be able to sell ground by feu disposition and in most cases, will no longer be able to

enforce many of the burdens that have been imposed on ground that has already been sold.

4. IMPLICATIONS OF THE ACT

The Act abolishes the right of a Superior to enforce burdens. On the appointed day, therefore, the Council, as Superior, will be unable to enforce many conditions in any feu dispositions which have been previously granted. Even if there is a burden stating that a piece of ground is to be used, say, for recreation purposes only, the Council, as Superiors, may be unable to enforce this restriction.

There are many areas of ground which have been sold by the Council with burdens restricting use in order to preserve the amenity of an area. There will also be many cases where land or property has been sold for less than development value because there is a restriction on the use or a prohibition on the development without the consent of the Council.

There are a number of provisions in the Act which might serve to protect the Council's position in some cases:-

(i) Conversion of Burden to Neighbour Burden

To benefit from the provision, the Superior must register a notice with the Keeper of the Land Register declaring that he owns neighbouring land which benefits from the burden. The land owned by the Superior must have a building on it within 100m of the burdened land which is used by people. The main reason for this is to try to protect the amenity of an area and to ensure that neighbours can enforce the burdens.

This provision will not help the Council if we do not own any land with buildings in the vicinity of the burdened subjects.

(ii) Reservation of Development Value

In certain circumstances, compensation may be claimed if the property is sold at less than development value. This may be of use to the Council in a number of cases. For example, if the Council had previously gifted a hall to a local community to be used for community meetings etc and for no other purpose, a feu disposition would have been granted reserving the Superiority to the Council and imposing burdens restricting the usage of the hall. After the appointed day, the Council may be unable to enforce the burden and there will be nothing to prohibit the hall from being sold and the land redeveloped (subject to planning restrictions etc). The Council would then have lost a potentially valuable area of ground. The Act contains strict rules for claiming compensation and this will not be available in every situation. The amount of compensation is determined with regard to the potential development value of the site, not the actual value of the development. The amount payable will also be based on the valuation at the date on which the land was originally sold by the Council, not the date on which the development occurred. Obviously, the real development price of land in 20 years could be significantly higher than it is today and therefore the amount of compensation which may be payable in respect of a burden created today may be a fairly small amount in comparison.

(iii) Right of Pre-emption

A right of pre-emption is a right in favour of the previous owner of land to buy it back from the present owner. If the present owner wishes to sell the land, it must first be offered to the previous owner. Rights of pre-emption will not be affected by the new Act and will still be enforceable. However, a notice will still require to be registered to preserve the right. It should be noted with rights of pre-emption, that if the Council are offered a right to repurchase and this is turned down, the right of pre-emption will be lost. The right only operates on the first sale of the property.

5. FUTURE DISPOSALS OF LAND

As we are now aware of the provisions of the new legislation, consideration must be given as to how property is sold. Each individual case will require to be looked at to determine how best to deal with the disposal. It may be that certain disposals could be dealt with by way of long lease. (The maximum permitted is 175 years). A premium could still be paid but the Council would retain control as Landlords.

Rights of pre-emption may also be useful and consideration should be given as to whether the Council would like the right to buy back the subjects if they were being sold by the owners.

After the appointed day, the Council will only be able to grant dispositions. The Council will still be able to impose burdens in dispositions, subject to strict provisions. The main criteria would be that the Council are owners of neighbouring property and that the burden was imposed for the benefit of the neighbouring proprietor. In the event that the neighbouring property owned by the Council is sold on, the right to enforce the burden will pass to the new owner. There are also doubts as to whether burdens imposed in a Disposition will afford the Council the same protection as by sales by Feu Disposition.

Although the new legislation will not come into force for at least the next two years, there are still a number of factors to consider and there are already disposals which may be affected by the terms of the Act. A Working Group of officials is being established to consider what action is appropriate in respect of both the Councils' current land holding and future transactions.

4. FINANCIAL IMPLICATIONS

There are no financial implications arising from this Report.

5. CONSULTATION

The Chief Executive, Director of Finance and Director of Property Services have been consulted in preparation of this Report.

Catherine A Coull
Director of Law and Administration

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

