

Registers Update - Updating Registered Titles

UPDATE: 10.6

This is the latest in a series of updates dealing with the registration aspects of the feudal reform and title conditions legislation. It outlines the approach that the Keeper will take to updating registered title sheets in accordance with the Abolition of Feudal Tenure etc. (Scotland) Act 2000 ("the 2000 Act") and Title Conditions (Scotland) Act 2003 ("the 2003 Act").

Previous updates provide information on the appointed day (28 November 2004), feudal conveyances, constitution of real burdens, new deed types, Sasine Application Form and LR Forms, and superiority and mixed fee titles.

Background

Registers Update 10.1 explained the relevant provisions of the 2000 Act and the 2003 Act that confer upon the Keeper discretion to treat extinguished real burdens as subsisting, and also the position with regard to applications for removal of extinguished real burdens, during the 10 year transitional period from the appointed day.

Registers Update 10.5 explained that over the course of the 10 year transitional period the Keeper will undertake a programme to update registered Land Register titles to conform to the provisions of the legislation with regard to the removal of extinguished burdens and the addition of appropriate statements where burdens will continue to subsist.



As noted in more detail in Registers Update 10.5, the relevant provisions of the 2000 Act and the 2003 Act respectively have the following effect:

Section 17 of the 2000 Act extinguished the superior's right to enforce real burdens, subject to saving provisions. Under subsection (1) any real burden enforceable only by a superior was extinguished on the appointed day.

Part 4 of the 2003 Act abolished enforcement rights implied by common law but provided a preservation procedure and recreated some of these rights on a statutory basis. In future it will not be possible to create implied rights. Sections 52 to 56 of the 2003 Act and section 60 of the 2000 Act detail the circumstances whereby a burden will subsist, for example:

- Where real burdens are imposed under a common scheme expressly referred to;
- Where real burdens imposed on a common scheme are mutually enforceable by the owners of each property within that scheme;
- Where real burdens are imposed on sheltered housing; and
- Where real burdens are facility or service burdens

Updating Title Sheets

There are in excess of one million Title Sheets in the Land Register, most of which will contain burdens that were extinguished by the legislation on the appointed day. Of these, many will also contain burdens which are saved by the above mentioned provisions.

The Keeper will be carrying out a programme to update these titles over the course of the transitional period. This will begin in late April as a pilot that will run for up to six months. This will give us the opportunity to evaluate and refine the procedures. The pilot will commence with the county of East Lothian. The Keeper will use the experience gained from the pilot to prepare an indicative plan for the remaining counties to be updated throughout the 10 year transitional period. The plan will be updated annually. The Keeper will communicate the plan to the profession.



What will be updated?

Those burdens that are extinguished by the section 17 of the 2000 Act and not saved by any other provision will be removed i.e. a feudal burden that is expressly only enforceable by the superior. The Keeper will also remove at this time any reference to non-leasehold irritancy, feuduty (except where it defines apportionment of maintenance obligations), any expired manager burdens and any reference to the School Sites Act 1841.

Where a burden is saved, a statement will be added in the form of a note at the end of the relevant burden entry in the D section of the title sheet, stating which of the provisions of the 2003 Act provides that it subsists.



Further Information

Further detail on the policy, practice and plan for updating titles will be published in a future Registers Update.

All previous Registers Updates are available on our website www.ros.gov.uk/updates.

How will updated titles be identified?

A title sheet that has been updated will bear the following statement:

"Where the Keeper considers that any real burdens which affected the subjects in this title were extinguished by virtue of s.17 of the Abolition of Feudal Tenure etc (Scotland) Act 2000 and s.49 of the Title Conditions (Scotland) Act 2003, these have been removed or ommited from the title sheet. Further, where the Keeper is satisfied that any remaining real burdens subsist by virtue of the rights of enforcement constituted by s.60 of the said Act of 2000 or s.52 to 54 and s.56 of said Act of 2003, a statement or statements to that effect have also been entered".

This statement will appear in the additional information field when completing an Application Record search on Registers Direct and as a note at the end of the D section when viewing the title sheet. No Land Certificates will be recalled or re-issued as part of the process of updating. However, a Land Certificate issued following a subsequent transaction will contain the statement that the title has been updated in terms of the legislation.

