

Foreword

This notice cancels and replaces Notice 742/3 (January 2002). Details of any changes to the previous version can be found in paragraph 1.2 of this notice.

Further help and advice

If you need general advice or more copies of Customs and Excise notices, please ring the **National Advice Service** on **0845 010 9000**. You can call between **8.00 am and 8.00 pm, Monday to Friday**.

If you have **hearing difficulties**, please ring the **Textphone** service on **0845 000 0200**.

If you would like to speak to someone in **Welsh**, please ring **0845 010 0300**, between **8.00 am and 6.00 pm, Monday to Friday**.

All calls are charged at the local rate within the UK. Charges may differ for mobile phones.

Other notices on this or related subjects

[742 Land and property](#)

1. Introduction

1.1 What is this notice about?

This Notice provides a glossary of Scottish land law terms (see Section 2).

The information in this Notice may assist with the interpretation of our guidance on land and property. See Notice 742 Land and property.

The glossary is **not** exhaustive and is not intended as a guide to Scottish land law.

1.2 What's changed

This notice has been revised to take account of recent changes to Scottish land law.

You can access details of any changes to this notice since June 2005 on our Internet website at www.hmrc.gov.uk or by telephoning the National Advice Service on 0845 010 9000.

This notice and others mentioned are available both on paper and on our Internet website at www.hmrc.gov.uk.

2. Glossary of Scottish land law terms

Absolute interests in land

This means that a person has unfettered ownership of property, the equivalent of a freehold in English land law. In Scotland historically until the abolition of the feudal system there were two distinct legal estates, superiority and feu. The estate of superior was unfettered, and therefore absolute. Under a feudal estate the actual owner (or "feuar") must not have breached the feuing conditions, but he was otherwise entitled to complete possession of his property for all time, and therefore his ownership is also regarded as absolute, subject to any statutory restrictions, eg planning.

A coelo usque ad centrum

The grant of a disposition confers ownership of the land on the new owner not only of the whole grounds described in the disposition, but also buildings, woods, waters and fishing (not salmon) rights and any other property in or under the surface (such as mineral rights) or above it (eg the air space occupied by the building). This means that the owner in theory owns everything a coelo (from the sky) usque ad centrum (right down to the centre of the earth). However, in practice there are many exceptions to this principle. Planning law often restricts the use of the land; the mineral rights have often been reserved to a former superior, and the use of the air space above by aircraft is covered by other legislation.

Actio quanti minoris

This means literally "the action of how much less". Nowadays, the majority of contracts for the sale of land and/or buildings in Scotland provide that where the condition of the property does not match the terms of the contract, the purchaser may retain the property, but raise an action of damages against the seller based on "quanti minoris", that is how much less the property is worth than it would have been had the vendor not been in breach of contract.

This purchasers' right set out in Section 3, Contract (Scotland) Act 1997, amended the old common law, which had forced purchasers either to accept the property at the agreed price or reject it entirely and claim damages.

Allodial land

This is land that is held absolutely, ie without a superior or other hierarchical tenure. Effectively all land in Scotland is now allodial following the abolition of the feudal system, although this expression is not generally coined, and the term "ownership" is used.

A non domino

From a non-owner. Used to describe a disposition of land granted by a disponent who does not have title to the land. An a non domino disposition is used to disponent property with no traceable owner. After 10 years' unchallenged possession, the title of the disponent can no longer be challenged. The doctrine of positive prescription cures the defect in the manner in which title was passed.

Assignment

Under Section 96 of the VAT Act 1994, the English land law term "assignment" is interpreted in relation to Scotland to mean "assignment". An assignment is a document which transfers rights (eg a debt or the tenancy under a lease) from an assignor to an assignee. In Scotland an assignment must be intimated to interested third parties in order to be effective. For example, the tenant would be required to notify the assignment to the landlord.

Books of Council and Session

A public register of deeds held by the Keeper of the Registers of Scotland in which a wide variety of deeds may be registered.

Burden

See "[Real burden](#)".

Candlemas

A quarter or term day in Scotland, formerly the 2nd February but now by statute the 28th day of that month, except where the old date of 2nd February is expressly referred to in the relevant documents.

Common property

Property, either immovable or moveable, belonging to two or more owners pro indiviso, ie in an undivided manner with no separation of shares. Each co-owner may sell his undivided share. In matters of administration, except in the case of necessary operations, the wishes of an owner objecting to a course of action prevail. However, any owner may compel division and sale of the property. See also "[pro indiviso](#)".

Community right to buy

Under the provisions of the Land Reform (Scotland) Act 2003, and subject to specific qualifying conditions, a community body, formed in terms of the Act, can register an interest in relevant land (predominantly rural in nature) which will entitle that body to pre-emptively purchase the land if the owner of the land takes steps to sell it.

Confirmation

Power judicially conferred on the executor of a deceased person's estate to administer the estate. By confirmation an executor gains title to the property and assets of the deceased. This is comparable to probate or grant of representation.

Confusio

This arises where one party becomes the owner of two different interests in the same property, for example, both the landlord's and the tenant's interests in the property, or those of both creditor and debtor. In certain circumstances, the doctrine of "confusion" may operate to merge the two interests.

Creditor

A creditor is a person (natural or legal) to whom another person (the debtor) is indebted. A secured creditor over land is one who has been granted a deed by his debtor acknowledging indebtedness and providing security for the sum owed. If the security is over heritable property the granting of a standard security or floating charge is essential. A heritable creditor is the Scottish equivalent of a mortgagee such as a bank or building society.

Croft

An agricultural smallholding located where the crofting statutes apply, namely the former Counties of Argyll, Caithness, Inverness, Orkney, Ross & Cromarty, Sutherland and Shetland. Although crofters (since 1976) are able to own their land, generally speaking crofting is a form of tenancy in respect of which the crofter has security of tenure.

Individual crofters have the right to buy their croft either following agreement with the landlord or by application to the Scottish Land Court under the Crofters (Scotland) Act 1993. Communities of crofters may apply to buy eligible croft land under the crofting community right to buy provisions contained in the Land Reform (Scotland) Act 2003.

Deed of Conditions

A separate deed containing servitudes and real burdens which can then be referred to within multiple dispositions.

Deed of Real Burdens

A separate deed containing real burdens (and servitudes) used to impose title conditions on property without the need for a transfer of the property.

Destination

A direction, usually in a disposition or will, prescribing the order of succession to [moveable](#) and [heritable property](#) (see definition).

Dispone

Used in relation to land, this word means to transfer ownership. It was formerly essential to use the word to give validity to any deed transferring ownership of land; similar to "convey" in England.

Disposition

This is a formal document transferring ownership, or "title", to the land. Following the first stage in the conveyance of the property (the missives), the purchaser has a personal right against the seller. Ownership of the property, however, which is a real right, (ie a right in the land) does not pass to the purchaser until the disposition is registered in the Register of Sasines or Land Register of Scotland.

Docquet

An authenticating endorsement on a deed or other document.

Dominant tenement

A dominant tenement enjoys a right to exercise a real burden or a servitude, (the Scottish equivalent of the English easement or right over land) over neighbouring land. The land or property which is burdened is called the servient tenement. The more modern terms of "benefited property" and "burdened property" respectively are becoming more common.

Ex adverso

This means "opposite to". It is a term used to describe the position of land or buildings.

Excambion

A contract of excambion exchanges one piece of land for another.

Executor

A legal representative of a deceased person whose duty is to wind up the estate of the deceased.

Extract

This describes the formal copy of a legal document which has equivalent status in law to the original deed.

Fee

Under the terms of a trust or through an appropriate conveyance a person known as a liferenter may be entitled to possess or use a property temporarily during his lifetime only or another specified period. However, once the liferent has terminated the property usually passes to the fiar, who is then entitled to full rights over the property. The rights of the property enjoyed by a fiar are known as the fee.

Feuduty

Feuduties, which were payments of money due (usually annually) by a feuar to a superior, were abolished by the Abolition of Feudal Tenure etc (Scotland) Act 2000. However, a former superior has a period of two years from 28 November 2004 (the date of abolition) within which to claim a compensatory payment of approximately 21 times the amount of the annual feuduty from the party who was the feuar on 28 November 2004.

Fiar

A person who owns a fee (see "[fee](#)").

Floating charge

This is a security for an obligation created by a company over all or part of that company's property. A company may, however trade and alienate that property until the floating charge attaches or crystallises.

Grassum

A single payment often made in addition to a periodic payment such as rent. A grassum can also mean any payment made to a landlord by a person wanting to obtain a tenancy; comparable to a premium in England.

Heritable property (also heritage)

Heritable property ("real" or "immovable") as opposed to moveable property includes only naturally immovable items such as land minerals, or any object attached to the land such as buildings. Trees, crops and other plants are only regarded as heritable when they are still growing in the soil; once they are cut down they become moveable property. Rights connected with heritable property such as servitudes or debts secured over land are also heritable.

Hypothec

A hypothec is a way of obtaining security for a debt without taking possession of the property itself. For example, in cases of non-payment of rent, a landlord may have a right of hypothec over his tenants' effects brought on to his premises.

Incorporeal moveable property

Incorporeal moveable property is intangible property. Examples include court orders for payment of sums of money, a claim arising from non-payments of debts or for a breach of contract.

Irritancy

Irritancy is the Scottish equivalent of the English right of forfeiture. It now refers only to the premature termination of the lease by the landlord, when the tenant has failed to comply with one or more of its obligations under the lease. The grounds for irritancy will almost always be set out in the lease; they include non-payment of rent, breach of one or more of the conditions under the lease, or the tenant's insolvency. The Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Sections 4-7 deal with irritancies of leases.

Feudal Reform: formerly, superiors could irritate a feu if the feuar failed to comply with feudal burdens or failed to pay feuduty. Since 9 June 2000, when the Abolition of Feudal Tenure etc (Scotland) Act 2000 received Royal Assent, this remedy has been abolished.

Joint property

Property in which ownership is indivisibly vested in two or more persons. Each cannot dispose of any share as there are no shares. Examples include property of the members of a members' club and an estate vested in trustees. See "[common property](#)".

Jus quaesitum tertio

If a contract between two parties is drawn up to benefit a third party or a class or group of people who are identified in the contract, either expressly or impliedly, it is said to confer a "jus quaesitum tertio" on the third party. Formerly, third party rights of this type could arise by implication in relation to entitlement to enforce real burdens. Such implied rights have now been abolished and replaced by statutory implied rights of enforcement under the Title Conditions (Scotland) Act 2003.

Keeper of the Registers of Scotland

The officer in charge of the Registers of Scotland, which include the Register of Sasines and the Land Register of Scotland.

Lammas

A quarter or term day in Scotland, formerly 1st August, but now by statute the 28th day of that month except where the old date of 1st August is expressly referred to in the relevant documents.

Land Register of Scotland

A public register of interests in land in Scotland under the management and control of the Keeper of the Registers of Scotland. It is being brought progressively into effect under the Land Registration (Scotland) Act 1979. It will eventually supersede the recording of deeds in the Register of Sasines.

The whole of Scotland is now operational for land registration, which means that any sale of property for valuable consideration (eg a price) will induce a first registration in the Land Register if it is not already registered in that Register. Unlike the Register of Sasines, registration in the Land Register is sufficient to guarantee the validity of title to property, provided there is no qualification on the indemnity provided by the Keeper.

Lands Tribunal for Scotland

The remit of this tribunal includes the settlement of disputes on compensation for acquiring land and altering or discharging real burdens. An appeal against any decision can be taken to the Court of Session and ultimately to the House of Lords.

Lease/licence

They are not necessarily the same as in England. A licence has a more limited meaning in Scottish law, and most licences will in fact be leases under Scottish law.

Legal rights

Rights to share in the estate of a deceased person, enjoyed by a surviving spouse and direct descendants, regardless of any will.

Lien

A lien is a right to retain a debtor's moveable property until the debt is paid.

Liferent

A liferent is a right to enjoy the use and benefit of another's land for the lifetime of the beneficiary, see "[fee](#)". There are two types of liferent, proper and trust. A proper liferent is one created by a disposition. A trust liferent is where a trust is interposed.

Martinmas

A quarter or term day in Scotland, formerly the 11th November, but now by statute the 28th day of that month except where the old date of 11th November is expressly referred to in the relevant documents.

Minute of Waiver

The Scottish equivalent of a deed of variation. Land and buildings may be subject to real burdens, restricting the use to which they may be put. For example, a property owner may be allowed under a disposition only to build houses on an area of land, or use a building for a particular purpose. In such cases, the owner may ask those with the interest to enforce the burden to grant a waiver altering the terms of the burden, removing the restriction on the use of the land.

Missives

This is the first stage in the conveyance of property in Scotland. A missive is a document in letter form exchanged between the seller and purchaser of a property usually written by their respective solicitors as agents. Once the missives are concluded, the purchaser has a contractual, ie personal right to demand that the seller perform his obligation to convey the property. For the second and third stages of conveyancing, see "[disposition](#)", "[Land Register](#)" and "[Register of Sasines](#)".

Moveable property

All property which is not heritable is regarded as moveable in Scottish land law. This includes animals, furniture, vehicles etc.

Narrative

The narrative of a deed is similar to what is termed "recitals" in English law and sets out the basis of the transaction, the most common being sale.

Notice to quit

A notice in statutory form given by either party to a lease, indicating his or her intention to terminate a lease.

Notice of title

An instrument used infrequently setting out the right of a person to heritable property which, when recorded in the General Register of Sasines or the Land Register of Scotland, completes the person's title to the property.

Overriding interests

These are rights such as floating charges, short leases or servitudes which bind proprietors of land although they do not appear in the property registers.

Personal Real Burdens

In general, for a real burden to be enforceable, there must be an identifiable "benefited property" entitled to the benefit of the burden. The Title Conditions (Scotland) Act 2003 introduced a new category of burden - the personal real burden - where a benefited property is not required and instead the burden is enforceable by a person (or other entity). The categories of personal real burdens are: conservation burdens, rural housing burdens, maritime burdens, economic development burdens and health care burdens, all of which can only be created in favour of a limited category of persons - local authorities, Scottish Ministers, conservation bodies or the Crown, for example. Two other types of personal real burden - personal pre-emption burdens and personal redemption burdens only apply to former feudal burdens of this type which have been converted prior to 28 November 2004.

Personal right

A contractual right, as opposed to a real right (which is a right secured over the property itself). See "[disposition](#)".

Pre-emption

This refers to a condition in a deed entitling a party to the deed to make the first offer in the event of the property being put on sale.

Prescription

Rules of law by which certain rights and obligations are established or extinguished, for instance:

- the grant of a right arising from long usage and enjoyment of the right, (positive prescription: 10 years, or 20 years in certain cases), or
- the extinction of a right arising from abandonment or long neglect to exercise or enforce the right (negative prescription: 5 years, or 20 years in certain cases).

Presents

In a deed "these presents" means the deed itself.

Probative

This means a deed can be presumed to have been validly executed by the individual who granted it. Following the Requirements of Writing (Scotland) Act 1995, the expression "probative" is no longer used and the term "self-proving" is used instead. A deed is self-proving if it is subscribed by a granter and also a witness and details of the name and address of the witness are added to the deed, and if there is nothing on the face of the deed to contradict the assumption that the signatures are valid. Deeds by companies are presumed to have been validly executed if executed by two directors or by one director and the company secretary or by two authorised signatories. Alternatively a single director or the company secretary or a single authorised signatory may sign in the presence of a witness.

Pro indiviso

The Scottish equivalent of the English tenancy in common. It applies to one property owned by several persons in common, although they need not have equal shares in it. Each owner has a title to a fraction of the undivided property as a whole.

Quarter days

Candlemas, Lammas, Martinmas and Whitsunday. Also known as term days.

Real burden

Conditions upon lands which are effective due to their registration in one of the Register of Sasines or the Land Register of Scotland. There are no fixed forms of real burdens although they should either impose positive obligations, negative obligations, or obligations which are ancillary to a positive or negative obligation and be consistent with the criteria for creation of real burdens specified in the Title Conditions (Scotland) Act 2003. Examples are obligations of upkeep, or prohibitions on using property for business purposes.

The obligation runs with the land in perpetuity. The land burdened by the obligation is known as the burdened property, and the land which enjoys the benefit of the obligation is known as the benefited property.

Reduction

To set aside or annul, usually by an action of reduction, a deed, contract, decree or award.

Regalia majora

Rights in land which belong to the Crown. These rights cannot usually be disposed of by the Crown as they are held for the benefit of the people.

Regalia minora

Rights which belong to the Crown, but which can be made over to members of the public. These include the use of the seashore and fishing for salmon and oysters in the sea, as well as taking mussels and clams from the seabed.

Register of Sasines

The General Register of Sasines is used to record the transfer of ownership of land by the registration of deeds. Only when a purchaser of land has the deed relating to the transfer of land recorded in the Register of Sasines can he be regarded as having full ownership over the property. Being superseded by the Land Register. See also "[Land Register](#)".

Registration of Title

This describes the system used by the Land Register of Scotland, which was established in 1979 and was introduced across Scotland, County by County. Eventually it will completely replace the Register of Sasines. Registration of Title in respect of a plot of land or property in the Land Register grants the owner the real right of ownership.

Renunciation

Similar to a surrender in English land law. However, in English land law, when a tenant surrenders the lease to a landlord, the landlord obtains the tenant's interest in the property, and any subleases under that interest would remain in force. This is different from Scottish law, where if a tenant renounces his lease, his contract is terminated completely and the landlord can take personal possession of the property. Consequently any sublease would cease to exist, unless the landlord specifically consented to the sublease and acknowledged that it would continue even if the main lease has been terminated.

Servient tenement

See "[dominant tenement](#)".

Servitude

The Scottish equivalent of an English easement. It may involve granting a right of access or a right to a water supply for example and thus may limit the use to which a property may be put, or it may bring benefit to a property. See also "[dominant tenement](#)".

Solum

A solum is an area of ground upon which buildings have been constructed. An owner of a building will also own the solum, unless there is provision to the contrary, but not necessarily the mineral rights. See also "[a coelo usque ad centrum](#)". In cases of blocks of flats, the owner of the ground floor flat owns the solum. However, unless there is specific provision to the contrary in the titles, the solum is designated as part of "scheme property" under the Tenements (Scotland) Act 2004, for the purposes of liability for maintenance, so that all of the owners of flats in the tenement will have to bear a share of maintenance, regardless of ownership. Frequently the titles to all of the flats provide that the solum, in addition to various other common parts of a tenement such as the roof, is owned by all the proprietors.

Standard security

This is a heritable security, which is now the only competent method of creating security over land. Statute has created certain standard conditions which, in order to be avoided, must be expressly varied.

Summary diligence

The end of a Scottish lease often uses the expression "and we consent to registration for preservation and execution". This entitles a landlord to recover any rent which the tenant has not paid by a process known as summary diligence. Instead of having to resort to proving the debt in a court, the landlord obtains an official judicial copy of the lease which is the equivalent of a court decree for the sum due and this is enforced by the Sheriff Officer (Bailiff) or Messenger at Arms.

Tacit relocation

The continuation of a lease after its expiry by operation of law because neither party has taken steps to terminate the lease.

Testing-clause

The clause which sets out details of when and where and by whom the deed was signed and identifies the witnesses.

Udal tenure

Land held under a remnant of Norse law in Orkney and Shetland. It is a form of allodial tenure in Orkney and Shetland, ie there is no formal superiority.

Vacant possession

Heritable property is commonly sold on the basis that the purchaser will obtain full, unhindered possession of untenanted subjects.

Vest, to

When land or property or rights over them are vested in a person, it means that he has a legal right of disposal but not necessarily a title.

Whitsunday

A quarter or term day in Scotland, formerly 15th May, but now by statute the 28th of that month except where the old date of 15th May is expressly referred to in the relevant documents.

Do you have any comments?

We would be pleased to receive any comments or suggestions you may have about this notice. Please write to:

**HM Customs and Excise
Property VAT Team
Room 3E/12
100 Parliament Street
LONDON
SW1A 2BQ**

Please note this address is **not for general enquiries**. You should ring our National Advice Service about those.

If you have a complaint or suggestion

If you have a complaint please try to resolve it on the spot with our officer. If you are unable to do so, or have a suggestion about how we can improve our service, you should contact one of our Regional Complaints Units. You will find the telephone number under 'Customs and Excise - complaints and suggestions' in your local telephone book. Ask for a copy of our code of practice 'Complaints and putting things right' (Notice 1000). You will find further information on our website at <http://www.hmrc.gov.uk>.

If we are unable to resolve your complaint to your satisfaction you can ask the Adjudicator to look into it. The Adjudicator, whose services are free, is a fair and unbiased referee whose recommendations are independent of Customs and Excise.

You can contact the Adjudicator at:

The Adjudicator's Office
Haymarket House
28 Haymarket
LONDON
SW1Y 4SP

Phone: (020) 7930 2292

Fax: (020) 7930 2298

Email: adjudicators@gtnet.gov.uk

Internet: <http://www.adjudicatorsoffice.gov.uk/>

Update 1 issued November 2008

The main change in this Update is the reference to ownership of land.

Overall – all references to 'HM Customs & Excise' to be **changed** to 'HM Revenue & Customs'.

Inside front cover - under 'Other notices on this or related subjects', **add** '742A *Opting to tax land and buildings*'

Inside front cover and page 1 – **amend** www.hmce.gov.uk to **www.hmrc.gov.uk**

Page 5 – under 'Croft', 2nd para, 2nd sentence, **amend** 'crafting' to 'crofting'

Page 7 – under 'Feuduty', 2nd sentence, **amend** 'has' to 'had'

Page 7 – under 'Floating charge', **insert** a comma after 'however'

Page 11 – after the section 'Overriding interests', **insert** new definition '**Ownership of land** See 'Allodial land''

Page 11 – under 'Personal Real Burdens', 3rd sentence, **insert** 'manager burdens' after 'economic development burdens'

Page 13 – under 'Real burden', 2nd sentence, **insert** 'such burdens classified as 'affirmative burdens' in the Title Conditions (Scotland) Act 2003' after 'positive obligations';

insert 'such burdens classified as 'negative burdens' in the Title Conditions (Scotland Act) 2003' after 'negative obligations';

and **insert** 'such burdens classified as 'ancillary burdens' in the Title Conditions (Scotland) Act 2003' after 'Title Conditions (Scotland) Act 2003'.

Notice 742/3 Scottish Land Law Terms
June 2005

Inside back cover – under '**Do you have any comments?**', **amend** 'Room 3E/12' to 'Room 3/34'

Inside back cover – **amend** address, phone and fax details of the Adjudicator to:

The Adjudicator's Office
8th Floor
Euston Tower
286 Euston Road
London NW1 3US

Phone: 0300 057 1111

Fax: 0300 057 1212

Internet: www.adjudicatorsoffice.gov.uk