

Goodbye feudalism, hello feuds

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CENTURIES of feudalism in Scotland came to an end this morning. But as land reformers hail the end of an unfair anachronism, legal experts warn that new legislation will become a “nimby’s charter”, resulting in a flood of costly disputes between neighbours.

The sweeping reforms will give thousands of householders unprecedented powers to veto minor home improvements by their neighbours.

Professor Roddy Paisley, an authority on property law who is based at Aberdeen University, believes that as many as 1.5m householders will have to seek permission from their neighbours to carry out work that does not require planning permission — such as fitting replacement windows, carrying out loft conversions or erecting boundary fences.

At present many properties in Scotland are held under feudal tenure, a system that requires “vassals” — homeowners — to seek permission from their “superiors” — housebuilders — to carry out minor improvements. Typically, consent is granted for a fee of about £300.

Ministers, however, have changed the law to stop what they regarded as an “archaic system used only for extracting money from property owners”.

Feudalism was introduced to Britain after the Norman conquest of 1066 and spread to Scotland under King David I in the 12th century.

Under the new Abolition of Feudal Tenure Act, power will pass from the superior to all of his former vassals living in the same street or estate, who will have a common interest in one another’s properties and a right of veto.

According to Paisley, the change will apply to post-war developments where builders imposed the same feudal conditions on all the properties in a particular street or housing estate. He believes those people already in dispute with their neighbours will exploit the legislation to cause as much aggravation as possible to rivals.

Paisley predicts that neighbourhood policing groups will be formed to identify and block “unwelcome” changes to other properties on their street or estate. The disputes would have to be settled at the Lands Tribunal for Scotland in Edinburgh, following hearings that can cost thousands of pounds and take more than a year to settle.

“This amounts to a nimby’s charter,” said Paisley. “Previously, the superiors had rights to enforce title conditions to require people not to carry out improvements to their house.

“Although this legislation will see Scotland becoming more democratic, in some cases it will unleash a whole load of busy-bodies. That wasn’t the case under the old law.”

Paisley’s view is echoed by Donald Reid, a member of the Law Society of Scotland’s conveyancing committee. “With the feudal superior dead and buried, you would think that you didn’t have to ask anybody’s permission. In reality, what has not disappeared are underlying potential rights of mutual enforcement among neighbours. These rights are going to come to the fore.

“In fact, it has inadvertently improved the law for neighbours who want to be awkward.”

One senior lawyer based in Glasgow, who asked not to be named, added: “The mood among property lawyers and conveyancers is that there’s greater scope for neighbour disputes to develop. That’s not what we want to happen — it’s unpleasant being involved in them and no amount of money can compensate for getting your ear constantly chewed off by an irate client.”

Neighbour disputes are such a problem in some parts of the country that councils, including Perth and Kinross, Glasgow and Shetland, have appointed mediators to resolve them. Boundary disputes are one of the most common causes.

The Lands Tribunal said it was aware of the act’s potential to stoke up more disputes among neighbours. “It’s possible there will be more appeals and we are prepared for a potential increase,” said Douglas Ballantyne, deputy clerk to the Lands Tribunal, which handles about 50 cases each year.

A Scottish executive spokesman said: “The new legislation will remove the ability of distant superiors to prevent or tax developments in which they have no interest, other than financial gain. The new legislation will, however, maintain and strengthen the rights of neighbours to protect their own interests.

“It is only right that the surrounding community should have the right to protect the amenity of their properties. In situations where agreement cannot be reached we would expect the Lands Tribunal to make fair and effective decisions.”
