

LAND REGISTRATION ETC. (SCOTLAND) ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: the Land Register

Title sheets and the title sheet record

Section 3: Title sheets and the title sheet record

28. Subsections (1) and (6) together establish a key principle that each registered plot of land has a title sheet and there is only one title sheet for each plot. This is, however, subject to exceptions in subsections (2) and (7).
29. Subsection (4) defines “plot of land” as an area or areas of land all of which are owned by one person or jointly by more than one person. A separate tenement, such as mineral rights, or a flat in a tenement building, is a plot of land for these purposes under subsection (5).
30. Subsection (2) allows the Keeper to continue the current practice of creating a title sheet for a registered lease. This means there may be more than one title sheet for a plot of land where all or part of the plot is leased. Lease title sheets are subsidiary to title sheets made up under subsection (1) of this section.
31. In the case of the exception for pertinents, subsection (7) allows exclusive pertinents (such as gardens, garages and bin-stores) to be included in the same title sheet as the main part of the land being registered. Where a pertinent is in common ownership, a shared plot title sheet may be created instead (see sections 17 to 20).

Section 4: Title and lease title numbers

32. This section is self-explanatory.

Section 5: Structure of title sheets

33. Subsection (1) of this section provides for the sections of a title sheet. This replicates the sections of the title sheets as they appear in existing title sheets. Statutory provision with regards to title sheets was made in section 6 of the Land Registration (Scotland) Act 1979 and in the Land Registration (Scotland) Rules 2006.
34. Subsection (2) contains a power of the Keeper to sub-divide sections of the title sheet, which would enable, for example, the proprietorship section of a title sheet to be divided to reflect the provisional ownership of a prescriptive claimant (see section 43) in one part and the underlying ownership of another person in the other part.

Section 6: The property section of the title sheet

35. This section sets out what has to be included in the property section of the title sheet. It is commonly known as the “A section”. The property section sets out what the registered property is. Subsection (1)(a)(i) requires the description of the plot of land to be a description by reference to the cadastral map. This reflects the importance of the cadastral map in the Land Register under the Act in showing the registered boundaries of plots of land.
36. Subsection (1)(b) requires the particulars of incorporeal pertinents (such as servitudes) to be entered onto the property section.
37. Subsection (1)(c) requires alluvion agreements (made under section 66) to be entered on the property section.
38. Where the title sheet is for a sharing plot (see sections 17 to 19) or a sharing lease (see section 20 and schedule 1), subsection (1)(d) requires the property section of the title sheet to specify what the share in the shared plot or shared lease area is.
39. Subsection (1)(f) requires, in the case where more than one title sheet exists relating to the same area of land (such as a title sheet for ownership of the land and a title sheet for ownership of the minerals under the surface of that land), that the property section of each title sheet provide a cross-reference to the other title sheet(s).

Section 7: The proprietorship section of the title sheet

40. This section of the title sheet sets out who owns the property described in the property section and their respective shares (for common ownership). This section is commonly known as the “B section”.
41. For the purposes of subsection (1)(a), the “designation” of the proprietor is defined in section 113(1).
42. Subsection (2) provides for exceptions to these requirements in the case of shared plot and shared lease area title sheets (see section 17 and schedule 1), and for title sheets which show areas in common that were already included in two or more title sheets before the designated day. Also relevant to the effect of subsection (2) is:
- where the title sheet is a shared plot or shared lease area title sheet, the plot numbers of the sharing plot are to be entered to make the link; the quantum of the shares (i.e. the share of the whole) in the shared plots must be entered (see section 18(2)(a) and paragraph 7(a) of schedule 1);
 - for title sheets created before the commencement of the Act, where (1) common areas were entered on more than one title sheet and the Keeper makes a shared plot or shared lease area title sheet, and (2) the quantum of shares were not entered on the existing title sheets, the respective shares of the common owner do not have to be entered on the new shared plot or shared lease area title sheet (see paragraph 9 of schedule 4); and
 - where the title sheet is for a flat in a tenement or other single flat building and the Keeper has mapped the tenement (or flat building) as provided for in section 16, the Keeper need not enter the respective shares (such as the common close).

Section 8: The securities section of the title sheet

43. Subsection (1) sets out the information that the Keeper must enter in the securities section of a title sheet. It is commonly known as the “C” or charges section.
44. Subsection (2) makes reference to provisions on shared plot and shared lease title sheets which make specific provision about the securities section of those title sheets.

Section 9: The burdens section of the title sheet

45. Subsection (1) sets out the information that the Keeper must enter in the burdens section of a title sheet in respect of the property. It is commonly known as the “D section”.
46. Certain burdens (such as short leases i.e. those lasting 20 years or less) are not capable of registration and so will not appear in the burdens section.
47. Subsection (3) allows the Keeper to omit burdens from a shared plot title sheet (or a shared lease area title sheet) where the burden is disclosed in the title sheets of each of the sharing plots anyway.

Section 10: What is entered or incorporated by reference in a title sheet

48. Subsection (2) sets out the additional matters that the Keeper must enter on a title sheet and includes a general duty to include such information as the Keeper considers appropriate. This might be used, for example, to enter statements on a title sheet about the existence of a real burden subsisting by virtue of any of sections 52 to 56 of the Title Conditions (Scotland) Act 2003 (various implied rights of enforcement) or section 60 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (preserved right of Crown to maritime burdens).
49. Subsections (4) and (5) make it clear that the information entered cannot contain any rights or obligations not authorised by law, and if rights or obligations are so entered, their entry has no effect. Therefore, should a right and obligation appear on a title sheet when it is not authorised by law, or the entry relates to a right or obligation, which is merely a personal right, their entry is of no effect and does not constitute notification of the right to any party searching the Land Register.
50. Subsection (3) allows the Keeper to incorporate into the title sheet additional documents by reference. This includes documents in the archive record, such as supplementary plans or deeds registered in other registers the Keeper manages and controls (such as deeds in the General Registers of Sasines, the Register of Inhibitions or the Books of Council and Session).
51. Subsections (2)(b) and (6) mean that while particulars of special destinations can be entered on title sheets generally, they cannot be entered on shared plot title sheets or shared lease title sheets.