

# LAND REGISTRATION ETC. (SCOTLAND) ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8: Rectification of the Register**

##### **Rectification**

##### ***Section 80: Rectification of the register***

190. This section imposes a duty on the Keeper to rectify the Land Register when it contains an inaccuracy. The term "inaccuracy" appeared in section 9(1) of the Land Registration (Scotland) Act 1979, however it was not defined. The meaning of "inaccuracy" is provided for in section 65 of the Act.
191. Subsection (1) is an important provision that sets a high evidential standard for rectification - that the inaccuracy is "manifest". This means that the position must be beyond dispute, in effect that it is more than simply probable that there is an inaccuracy. It is for the Keeper to determine when an inaccuracy is manifest or not.
192. Subsection (2) maintains the approach, providing that the Keeper must only rectify the register if what is needed to rectify the register is also manifest. It is likely that an inaccuracy, and what is needed for rectification of an inaccuracy, will be manifest only where either there is no room for doubt or where the matter has been judicially determined.

##### ***Section 81: Rectification where registration provisional etc.***

193. This section is a limited qualification to the Keeper's duty to rectify under section 80. Where rectification would interrupt a period of positive prescription (including in the case of a prescriptive claimant under section 43), the Keeper may only rectify the Register where those who are affected consent or where the fact of the inaccuracy has been judicially determined.

##### ***Section 82: Referral to the Lands Tribunal for Scotland***

194. This section will allow anyone with an interest to refer questions relating to the accuracy of the register and what may need to be done to rectify the register to the Lands Tribunal for Scotland. The power mirrors the two limbs for the rectification of inaccuracies contained in section 80. It allows the Lands Tribunal discretion to determine whether a question is one which has a connection with the accuracy of the Land Register, e.g. to resolve a dispute over a boundary between properties or the existence of a servitude. Giving the Tribunal this jurisdiction provides parties with an alternative to the ordinary courts to have questions regarding the accuracy of the register determined. Subsection (2) provides for notice by the Lands Tribunal once a question has been determined, to the applicant, the Keeper and any other interested parties. Otherwise the processes

will be regulated by the Lands Tribunal rules and the discretion of the Tribunal. It will remain for the Keeper to decide under section 80 how to reflect the Lands Tribunal's determination (subject to appeal).

***Section 83: Proceedings involving the accuracy of the register***

195. This section is self-explanatory.

**Compensation in consequence of rectification**

***Section 84: Rectification: compensation for certain expenses and losses***

196. This section is self-explanatory.

***Section 85: Rectification: circumstances where liability excluded***

197. This section provides for the limitations to the Keeper's liability to pay compensation under section 84 in respect of rectification of an inaccuracy. Paragraph (a) excludes liability, for example, where rights have been changed by an off-register event such as long negative prescription (for example where a servitude right of access is extinguished where it is not used over 20 years).

198. Paragraph (c) provides that the Keeper has no liability in relation to rectifications of inaccuracies caused by the fact the title is in favour of a prescriptive claimant. This means, for example, rectification to remove an entry relevant to a prescriptive claimant where their title has been successfully challenged, would not result in liability.