



# Land Registration etc. (Scotland) Act 2012

## 2012 asp 5

### PART 11

#### MISCELLANEOUS AND GENERAL

##### *Deduction of title*

#### **101 Deduction of title**

- (1) Where a person applies to register a deed mentioned in subsection (2), the deed need not deduce title.
- (2) The deed is one validly granted by the unregistered holder of—
  - (a) land, or
  - (b) a real right in land,to which the deed relates.

##### *Notes on register*

#### **102 Note of date on which entry in register is made**

When an entry is made in the register there is to be included in that entry the date on which it is made.

##### *Appeals*

#### **103 Appeals**

- (1) An appeal may be made to the Lands Tribunal for Scotland, on a question of fact or on a point of law, against any decision of the Keeper under this Act.
- (2) Subsection (1) is without prejudice to any other right of recourse, whether under an enactment or under a rule of law.

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- (3) Where a person successfully appeals against a decision of the Keeper to reject an application for registration, the application is not revived.

*Extracts and certified copies*

**104 Extracts and certified copies: general**

- (1) A person may apply to the Keeper for an extract—
- (a) of, or of any part of, a title sheet,
  - (b) of any part of the cadastral map, or
  - (c) of, or of any part of, a document in the archive record.
- (2) A person may apply to the Keeper for a certified copy—
- (a) of an application or advance notice in the application record,
  - (b) of, or of any part of, any other document in that record.
- (3) The Keeper must issue the extract or, as the case may be the certified copy, if—
- (a) such fee as is payable for issuing it is paid, or
  - (b) arrangements satisfactory to the Keeper are made for payment of that fee.
- (4) If, on application under subsection (1)(a) or (b), the applicant requests an extract in relation to a title sheet or the cadastral map as at a specific date, the Keeper need comply with the request only to the extent that it is reasonably practicable to do so.
- (5) An extract of a part of the cadastral map issued under subsection (3)—
- (a) must include the base map so far as relating to that part either—
    - (i) as at the date on which the extract is issued, or
    - (ii) if the Keeper considers it appropriate to do so, as at some earlier date, and
  - (b) must specify the base map date opted for under paragraph (a).
- (6) The Keeper may authenticate the extract or, as the case may be the certified copy, as the Keeper considers appropriate.
- (7) The Keeper may issue the extract, or as the case may be the certified copy, as an electronic document if (and only if) the applicant requests that it be issued in that form.

**105 Evidential status of extract or certified copy**

- (1) An extract or certified copy issued under subsection (3) of section 104 in relation to an application under subsection (1)(a) or (b) or (2)(a) of that section is to be accepted for all purposes as sufficient evidence of the contents—
- (a) of the original, and
  - (b) of any matter relating to the original which appears on the extract or copy.
- (2) An extract or certified copy issued under subsection (3) of that section in relation to an application under subsection (1)(c) or (2)(b) of that section is to be accepted for all purposes as sufficient evidence of the contents—
- (a) of the document as submitted to the Keeper, and
  - (b) of any matter relating to the document as so submitted which appears on the extract or copy.

## **106 Liability of Keeper in respect of extracts, information and lost documents etc.**

- (1) A person is entitled to be compensated by the Keeper in respect of loss suffered as a consequence of—
  - (a) the issue of an extract or certified copy under section 104 that is not a true extract, or as the case may be a true copy,
  - (b) the provision (in writing or in such other manner as provision is made for in an order under section 107(1)(a)) of other information as to the contents of the register that is incorrect,
  - (c) a document being lost, damaged or destroyed while lodged with the Keeper.
- (2) The Keeper has no liability under subsection (1)—
  - (a) in so far as the claimant's loss could have been avoided by the applicant or claimant taking certain measures which it would have been reasonable for the applicant or claimant to take,
  - (b) in so far as a claimant's loss is too remote, or
  - (c) for non-patrimonial loss.

### *Information and access*

## **107 Information and access**

- (1) The Scottish Ministers may, by order, make further provision as regards—
  - (a) information to be made available by the Keeper and the manner in which it is to be made available,
  - (b) access to any register under the management and control of the Keeper.
- (2) In subsection (1)(a), “information” includes information in the form of extracts and certified copies.

### *Keeper's functions*

## **108 Provision of services by the Keeper**

- (1) The Keeper may provide consultancy, advisory or other commercial services.
- (2) Those services need not relate to the law and practice of registration.
- (3) The terms on which those services are provided (including the fees charged for provision of them) are to be such as may be agreed between the Keeper and those provided with them.
- (4) If the Keeper considers it expedient to do so in connection with the provision of any of those services, the Keeper may (either or both)—
  - (a) form, or participate in the forming of, a body corporate or other entity,
  - (b) purchase, or invest in, a body corporate or other entity.
- (5) This section does not affect any other power or duty of the Keeper.

## **109 Performance of Keeper's functions during vacancy in office etc.**

- (1) This section applies where—

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- (a) there is a vacancy in the office of the Keeper or the Keeper is incapable by reason of ill health of performing the Keeper's functions, and
  - (b) no person has been authorised by the Scottish Ministers, under section 1(6) of the Public Registers and Records (Scotland) Act 1948 (c.57), to perform the functions of the Keeper.
- (2) A member of the Keeper's staff may perform the Keeper's functions.
- (3) Any function performed by a member of the Keeper's staff by virtue of subsection (2) is to be treated as if it had been performed by the Keeper.

### *Fees*

## **110 Fees**

- (1) The Scottish Ministers may, by order—
- (a) provide for the fees payable in relation to—
    - (i) registering, recording or entering in any register under the management and control of the Keeper,
    - (ii) access to such a register,
    - (iii) information made available by the Keeper,
  - (b) provide for the method of paying any such fees, and
  - (c) authorise the Keeper to determine, in such circumstances and subject to such limitations and conditions as may be specified in the order, any such fees.
- (2) An order under this section may make different provision for different cases or for different classes of case.
- (3) Before making an order under this section, the Scottish Ministers must consult the Keeper about, among other things—
- (a) the expenses incurred by the Keeper in relation to administering and improving the systems of—
    - (i) registering, recording or entering in any register under the management and control of the Keeper,
    - (ii) providing access to any such register, and
    - (iii) making information available,
  - (b) in the case of the register, the expenses incurred by the Keeper in bringing all titles to land into it,
  - (c) the desirability of encouraging registering, recording and entering in any register under the management and control of the Keeper.
- (4) In subsections (1)(a)(iii) and (3)(a)(iii), “information”—
- (a) includes information in the form of extracts and certified copies,
  - (b) does not include information provided by virtue of section 108.

### *Duty to take reasonable care*

#### **111 Duties of certain persons**

- (1) A person mentioned in subsection (2) must take reasonable care to ensure that the Keeper does not inadvertently make the register inaccurate as a result of a change made in consequence of the grant mentioned in that subsection.
- (2) The persons are—
  - (a) a person granting a deed intended to be registered,
  - (b) a person who, in connection with the grant, acts as a solicitor or other legal adviser to the granter.
- (3) A person mentioned in subsection (4) must take reasonable care to ensure that the Keeper does not inadvertently make the register inaccurate as a result of a change made in consequence of the application mentioned in that subsection.
- (4) The persons are—
  - (a) a person making an application for registration,
  - (b) a person who, in connection with the application, acts as a solicitor or other legal adviser to the applicant.
- (5) The Keeper is entitled to be compensated by a person in breach of the duty under subsection (1) or (3) for any loss suffered as a consequence of that breach.
- (6) But a person has no liability under subsection (5) in so far as—
  - (a) the Keeper's loss could have been avoided by the Keeper taking certain measures which it would have been reasonable for the Keeper to take, or
  - (b) the Keeper's loss is too remote.

### *Offence*

#### **112 Offence relating to applications for registration**

- (1) A person mentioned in subsection (2) commits an offence if the person—
  - (a) makes a materially false or misleading statement in relation to an application for registration knowing that, or being reckless as to whether, the statement is false or misleading, or
  - (b) intentionally fails to disclose material information in relation to such an application or is reckless as to whether all material information is disclosed.
- (2) The persons are—
  - (a) a person making an application for registration, or
  - (b) a person who, in connection with such an application, acts as solicitor or other legal adviser to the applicant.
- (3) It is a defence for a person charged with an offence under subsection (1) (the “accused”) that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (4) The defence is established if the accused—
  - (a) acted in reliance on information supplied by another person, and
  - (b) did not know and had no reason to suppose that—

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- (i) the information was false or misleading, or
  - (ii) all material information had not been disclosed.
- (5) Subsection (4) does not exclude other ways of establishing the defence mentioned in subsection (3).
- (6) An accused may not rely on a defence involving the allegation that the commission of the offence was due to reliance on information supplied by another person unless—
- (a) the accused has complied with subsection (7), or
  - (b) the court grants leave.
- (7) The accused must serve on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as is in the accused’s possession—
- (a) in proceedings on indictment, at least 14 clear days before the preliminary hearing (where the case is to be tried in the High Court) or the first diet (where the case is to be tried in the sheriff court),
  - (b) in summary proceedings—
    - (i) where an intermediate diet is held, at or before that diet,
    - (ii) where no such diet is held, at least 10 clear days before the trial diet.
- (8) Subsection (6) does not apply where—
- (a) the accused lodges a defence statement—
    - (i) under section 70A of the Criminal Procedure (Scotland) Act 1995 (c.46), or
    - (ii) under section 125 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) in accordance with the time limits mentioned in subsection (7)(b), and
  - (b) the accused’s defence involves an allegation that the commission of the offence was due to reliance on information supplied by another person.
- (9) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to imprisonment for a period not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both,
  - (b) on conviction on indictment, to imprisonment for a period not exceeding 2 years, to a fine, or to both.

### *General provisions*

## **113 Interpretation**

- (1) In this Act, unless the context otherwise requires—
- “1995 Act” means the Requirements of Writing (Scotland) Act 1995 (c.7),
  - “advance notice” has the meaning given by section 56(1),
  - “application for registration” means an application under section 21 or 27,
  - “application record” has the meaning given by section 15,
  - “archive record” has the meaning given by section 14(1),
  - “the base map” has the meaning given by section 11(6),
  - “benefited property” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9),

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“burdened property” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9),

“cadastral map” has the meaning given by section 11(1),

“cadastral unit” has the meaning given by section 12,

“date of application” (in relation to an application for registration) has the meaning given by section 36,

“date of registration” has the meaning given by 37(1),

“deed” means a document (and includes a decree which is registrable under an enactment),

“designation” includes—

(a) where the person designated is not a natural person—

(i) the legal system under which the person is incorporated or otherwise established,

(ii) if a number has been allocated to the person under section 1066 of the Companies Act 2006 (c.46), that number, and

(iii) any other identifier (whether or not a number) peculiar to the person, and

(b) if the person designated has a right in land in a special capacity, a description of that capacity,

“the designated day” has the meaning given by section 122,

“enactment” includes—

(a) an enactment comprised in, or in an instrument made under, this Act, and

(b) a local and personal or private Act,

“existing title sheet” means a title sheet which is in existence immediately before the commencement of the designated day,

“flat” has the meaning given by section 29(1) of the Tenements (Scotland) Act 2004 (asp 11),

“flatted building” has the meaning given by section 16(4),

“heritable creditor” means the holder of a heritable security,

“heritable security” means—

(a) a standard security, or

(b) any other right in security over heritable property provided that it is not a right in security created as a floating charge,

“the Keeper” means the Keeper of the Registers of Scotland,

“land” includes—

(a) buildings and other structures,

(b) the seabed of the territorial sea of the United Kingdom adjacent to Scotland (including land within the ebb and flow of the tide at ordinary spring tides), and

(c) other land covered with water,

“land register rules” means rules made under section 115(1),

“lease” includes sub-lease,

“lease title sheet” means a title sheet for a registered lease,

“personal real burden” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9),

“plot of land” has the meaning given by section 3(4) and (5),

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“possession” includes civil possession (analogous expressions being construed accordingly),

“proprietor” means a person who has a valid completed title as proprietor to a plot of land,

“protected period” has the meaning given by section 58(3),

“the register” means the Land Register of Scotland,

“registrable deed” is to be construed in accordance with section 49,

“sharing plot” and “shared plot” are to be construed in accordance with section 17(3),

“tenement” has the meaning given by section 26 of the Tenements (Scotland) Act 2004 ([asp 11](#)),

“title condition” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 ([asp 9](#)),

“title sheet record” has the meaning given by section 3(3).

- (2) A deed on which an application under section 21 is based is “valid” for the purposes of this Act if—
- (a) by the registration applied for, a right would be acquired, varied or extinguished, or
  - (b) the deed is certificatory of an acquisition, variation or extinction which has taken place.
- (3) In relation to a lease title sheet, any reference in this Act—
- (a) to a proprietor is (except in section 66) to be read as a reference to the tenant,
  - (b) to a proprietorship section is to be construed as a reference to a tenancy section, and
  - (c) to ownership in common is to be construed as a reference to tenancy in common.
- (4) The Scottish Ministers may, by order, amend paragraph (b) of the definition of “designation” in subsection (1).
- (5) Before making such an order, the Scottish Ministers must consult the Keeper.

#### **114 References to “registering” etc. in the Land Register of Scotland**

- (1) In this Act (other than subsection (2)), unless the context otherwise requires—
- (a) any reference to “registration” is to registration in the register, and
  - (b) analogous expressions are to be construed accordingly.
- (2) Unless the context otherwise requires—
- (a) any reference, however expressed, in any enactment to “registering” a document in the register, is to be construed as including a reference to giving effect to that document in accordance either with section 30 or with section 31, and
  - (b) analogous expressions are to be construed accordingly.

#### **115 Land register rules**

- (1) The Scottish Ministers may, by regulations, make land register rules—
- (a) regulating the making up and keeping of the register,



- (b) regulating the procedure in relation to applications for registration,
- (c) prescribing forms to be used in relation to the register,
- (d) as to when the application record is open for the making of entries,
- (e) requiring the Keeper to enter in the title sheet record such information as may be specified in the rules or authorising or requiring the Keeper to enter in that record such rights or obligations as may be so specified,
- (f) relating to any other matter which this Act provides may or must be provided for by land register rules, or
- (g) concerning other matters and seeming to them to be necessary or expedient in order to give full effect to the purposes of this Act.

(2) Before making land register rules, the Scottish Ministers must consult the Keeper.

## **116 Subordinate legislation**

(1) Any power conferred by this Act on the Scottish Ministers to make orders or regulations may be exercised to make different provision for different cases or descriptions of case or for different purposes.

(2) Orders and regulations under the following sections are subject to the negative procedure—

- (a) section 11(6)(b),
- (b) section 27(6),
- (c) section 45(7),
- (d) section 48(2) or (3),
- (e) section 56(4),
- (f) subject to subsection (4)(a), section 100(1),
- (g) section 115(1),
- (h) subject to subsection (4)(b), section 117(1).

(3) Orders and regulations under the following provisions are subject to the affirmative procedure—

- (a) section 37(3),
- (b) section 43(8),
- (c) section 58(6),
- (d) section 61(3)(b),
- (e) section 64(1),
- (f) section 68(3),
- (g) section 79(4),
- (h) section 84(7),
- (i) section 95(4),
- (j) section 99(3),
- (k) section 107(1),
- (l) section 110(1),
- (m) section 113(4).

(4) Orders and regulations under the following sections which add to, replace or omit the text of any Act are subject to the affirmative procedure—

- (a) section 100(1),

(b) section 117(1).

**117 Ancillary provision**

- (1) The Scottish Ministers may, by order, make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision made by or under this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).

**118 Transitional provisions**

Schedule 4, which contains transitional provisions, has effect.

**119 Minor and consequential modifications**

Schedule 5, which contains minor amendments and repeals, and amendments and repeals consequential upon the provisions of this Act, has effect.

**120 Saving provisions**

- (1) The amendments to the Prescription and Limitation (Scotland) Act 1973 (c.52) made by paragraph 18(2) and (4) of schedule 5 do not apply in relation to a continuous period which has expired before the designated day.
- (2) Despite the repeal, by paragraph 19(5) of schedule 5, of section 28(1) of the Land Registration (Scotland) Act 1979 (c.33), that section continues to have effect for the purposes of sections 15(4), 16, 20 to 22A and 29 of and schedules 1 and 3 to the 1979 Act.

**121 Crown application**

- (1) No contravention by the Crown of section 112 makes the Crown criminally liable.
- (2) But the Court of Session may, on the application of the Keeper or any person authorised by the Keeper, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Despite subsection (1), section 112 applies to persons in the public service of the Crown as it applies to other persons.

**122 The designated day**

The Scottish Ministers may, for the purposes of this Act, by order, designate a day (“the designated day”), being a day which falls not less than 6 months after the order is made.

**123 Commencement**

- (1) The following sections come into force on the day after Royal Assent—
  - (a) section 113,

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- (b) section 114(1),
  - (c) section 116,
  - (d) section 117,
  - (e) section 122,
  - (f) this section, and
  - (g) section 124.
- (2) The following provisions of this Act come into force on the designated day—
- (a) Parts 1 to 9 (other than sections 53(4) and 64) and schedules 1 and 2,
  - (b) sections 101 to 106,
  - (c) section 111,
  - (d) section 112,
  - (e) section 114(2),
  - (f) section 115,
  - (g) section 118 and schedule 4,
  - (h) section 119 and schedule 5,
  - (i) section 120, and
  - (j) section 121.
- (3) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.

**124 Short title**

The short title of this Act is the Land Registration etc. (Scotland) Act 2012.