



# Land Registration (Scotland) Act 1979

## 1979 CHAPTER 33

### PART I

#### REGISTRATION OF INTERESTS IN LAND

#### **1 The Land Register of Scotland.**

- (1) There shall be a public register of interests in land in Scotland to be known as the “Land Register of Scotland” (in this Act referred to as “the register”).
- (2) The register shall be under the management and control of the Keeper of the Registers of Scotland (in this Act referred to as “the Keeper”) and shall have a seal.
- (3) In this Act “registered” means registered in the register in accordance with this Act and “registrable”, “registration” and other cognate expressions shall be construed accordingly.

#### **2 Registration.**

- (1) Subject to subsection (2) below, an unregistered interest in land other than an overriding interest shall be registrable—
  - (a) in any of the following circumstances occurring after the commencement of this Act—
    - (i) on a grant of the interest in land in feu, long lease or security by way of contract of ground annual, but only to the extent that the interest has become that of the feuar, lessee or debtor in the ground annual;
    - (ii) on a transfer of the interest for valuable consideration;
    - (iii) on a transfer of the interest in consideration of marriage;
    - (iv) on a transfer of the interest whereby it is absorbed into a registered interest in land;
    - (v) on any transfer of the interest where it is held under a long lease, udal tenure or a kindly tenancy;

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- (b) in any other circumstances in which an application is made for registration of the interest by the person or persons having that interest and the Keeper considers it expedient that the interest should be registered.
- (2) Subsection (1) above does not apply to an unregistered interest which is a heritable security, liferent or incorporeal heritable right; and subsection (1)(a)(ii) above does not apply where the interest on transference is absorbed into another unregistered interest.
- (3) The creation over a registered interest in land of any of the following interests in land—
- (i) a heritable security;
  - (ii) a liferent;
  - (iii) an incorporeal heritable right,
- shall be registrable; and on registration of its creation such an interest shall become a registered interest in land.
- (4) There shall also be registrable—
- (a) any transfer of a registered interest in land including any transfer whereby it is absorbed into another registered interest in land;
  - (b) any absorption by a registered interest in land of another registered interest in land;
  - (c) any other transaction or event which (whether by itself or in conjunction with registration) is capable under any enactment or rule of law of affecting the title to a registered interest in land but which is not a transaction or event creating or affecting an overriding interest.
- (5) The Secretary of State may, by order made by statutory instrument, provide that interests in land of a kind or kinds specified in the order, being interests in land which are unregistered at the date of the making of the order other than overriding interests, shall be registered; and the provisions of this Act shall apply for the purposes of such registration with such modifications, which may include provision as to the expenses of such registration, as may be specified in the order.
- (6) In this section, “enactment” includes sections 17, 18 and 19 of this Act.

### Commencement Information

- II** S. 2 partly in force; s. 2 not in force at Royal Assent see s. 30(2); s. 2(3)-(6) wholly in force at 6.4.1981 by S.I. 1980/1412; s. 2(1)(2) in force for specified purposes in specified areas at 6.4.1981 by S.I. 1980/1412; s. 2(1)(2) in force for specified purposes in specified areas at 4.10.1982 by S.I. 1982/520; s. 2(1)(2) in force for specified purposes in specified areas at 3.1.1984 by S.I. 1983/745; s. 2(1)(2) in force for specified purposes in specified areas at 30.9.1985 by S.I. 1985/501; s. 2(1)(2) in force for specified purposes in specified areas at 1.10.1992 by S.I. 1992/815, art. 2; s. 2(1)(2) in force for specified purposes in specified areas at 1.4.1993 by S.I. 1992/2060, art. 2; s. 2(1)(2) in force for specified purposes in specified areas at 1.10.1993 by S.I. 1993/922, art. 2; s. 2(1)(2) in force for specified purposes in specified areas at 1.4.1995 by S.I. 1994/2588, art. 2; s. 2(1)(2) in force for specified purposes in specified areas at 1.4.1996 by S.I. 1995/2547, art. 2; s. 2(1)(2) in force for specified purposes in specified areas at 1.4.1997 by S.I. 1996/2490, art. 2; s. 2(1)(2) in force for specified purposes in specified areas at 1.4.1999 by S.I. 1998/1810, art. 2; s. 2(1)(2) in force for specified purposes in specified areas at 1.10.1999 by S.I. 1998/2980, art. 2; s. 2(1)(2) in force for specified purposes in specified areas at 1.4.2000 by S.I. 1999/111, art. 2; s. 2(1)(2) in force for specified purposes in specified areas at 1.4.2001 by S.I. 2000/338, art. 2; s. 2(1)(2) in force for

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specified purposes in specified areas at 1.4.2002 by [S.S.I. 2001/309, art. 2](#); s. 2(1)(2) in force for specified purposes in specified areas at 1.4.2003 by [S.S.I. 2002/432, art. 2](#)

### 3 Effect of registration.

(1) Registration shall have the effect of—

- (a) vesting in the person registered as entitled to the registered interest in land a real right in and to the interest and in and to any right, pertinent or servitude, express or implied, forming part of the interest, subject only to the effect of any matter entered in the title sheet of that interest under section 6 of this Act so far as adverse to the interest or that person's entitlement to it and to any overriding interest whether noted under that section or not;
- (b) making any registered right or obligation relating to the registered interest in land a real right or obligation;
- (c) affecting any registered real right or obligation relating to the registered interest in land,

insofar as the right or obligation is capable, under any enactment or rule of law, of being vested as a real right, of being made real or, as the case may be, of being affected as a real right.

In this subsection, “enactment” includes sections 17, 18 and 19 of this Act.

(2) Registration shall supersede the recording of a deed in the Register of Sasines but, subject to subsection (3) below, shall be without prejudice to any other means of creating or affecting real rights or obligations under any enactment or rule of law.

(3) A—

- (a) lessee under a long lease;
- (b) proprietor under udal tenure;
- (c) kindly tenant,

shall obtain a real right in and to his interest as such only by registration; and registration shall be the only means of making rights or obligations relating to the registered interest in land of such a person real rights or obligations or of affecting such real rights or obligations.

(4) The date—

- (a) at which a real right or obligation is created or as from which it is affected under this section;
  - (b) of entry of a feuar of a registrable interest in land with his superior,
- shall be the date of registration.

(5) Where an interest in land has been registered, any obligation to assign title deeds and searches relating to that interest in land or to deliver them or make them forthcoming or any related obligation shall be of no effect in relation to that interest or to any other registered interest in land.

This subsection does not apply—

- (a) to a land or charge certificate issued under section 5 of this Act;
- (b) where the Keeper has, under section 12(2) of this Act, excluded indemnity under Part II of this Act.

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- (6) It shall not be necessary for an uninfert proprietor of an interest in land which has been registered to expedite a notice of title in order to complete his title to that interest if evidence of sufficient midcouples or links between the uninfert proprietor and the person last infert are produced to the Keeper on any registration in respect of that interest and, accordingly, section 4 of the <sup>M1</sup>Conveyancing (Scotland) Act 1924 (completion of title by person uninfert) shall be of no effect in relation to such an interest in land.

This subsection does not apply to the completion of title under section 74 or 76 of the <sup>M2</sup>Lands Clauses Consolidation (Scotland) Act 1845 (procedure on compulsory purchase of lands).

- (7) Nothing in this section affects any question as to the validity or effect of an overriding interest.

#### Commencement Information

- I2** S. 3 partly in force; s. 3 not in force at Royal Assent see s. 30(2); s. 3(1)(2)(4)-(7) wholly in force at 6.4.1991 by [S.I. 1980/1412](#); s. 3(3) in force for specified purposes in specified areas at 6.4.1981 by [S.I. 1980/1412](#); s. 3(3) in force for specified purposes in specified areas at 4.10.1982 by [S.I. 1982/520](#); s. 3(3) in force for specified purposes in specified areas at 3.1.1984 by [S.I. 1983/745](#); s. 3(3) in force for specified purposes in specified areas at 30.9.1985 by [S.I. 1985/501](#); s. 3(3) in force for specified purposes in specified areas at 1.10.1992 by [S.I. 1992/851](#), [art. 2](#); s. 3(3) in force for specified purposes in specified areas at 1.4.1993 by [S.I. 1992/2060](#), [art. 2](#); s. 3(3) in force for specified purposes in specified areas at 1.10.1993 by [S.I. 1993/922](#), [art. 2](#); s. 3(3) in force for specified purposes in specified areas at 1.4.1995 by [S.I. 1994/2588](#), [art. 2](#); s. 3(3) in force for specified purposes in specified areas at 1.4.1996 by [S.I. 1995/2547](#), [art. 2](#); s. 3(3) in force for specified purposes in specified areas at 1.4.1997 by [S.I. 1996/2490](#), [art. 2](#); s. 3(3) in force for specified purposes in specified areas at 1.4.1999 by [S.I. 1998/1810](#), [art. 2](#); s. 3(3) in force for specified purposes in specified areas at 1.10.1999 by [S.I. 1998/2980](#), [art. 2](#); s. 3(3) in force for specified purposes in specified areas at 1.4.2000 by [S.I. 1999/111](#), [art. 2](#); s. 3(3) in force for specified purposes in specified areas at 1.4.2001 by [S.S.I. 2000/338](#), [art. 2](#); s. 3(3) in force for specified purposes in specified areas at 1.4.2002 by [S.S.I. 2001/309](#), [art. 2](#); s. 3(3) in force for specified purposes in specified areas at 1.4.2003 by [S.S.I. 2002/432](#), [art. 2](#)

#### Marginal Citations

- M1** 1924 c. 27.  
**M2** 1845 c. 19.

## 4 Applications for registration.

- (1) Subject to subsection (2) below, an application for registration shall be accepted by the Keeper if it is accompanied by such documents and other evidence as he may require.
- (2) An application for registration shall not be accepted by the Keeper if—
- (a) it relates to land which is not sufficiently described to enable him to identify it by reference to the Ordnance Map;
  - (b) it relates to land which is a souvenir plot, that is a piece of land which, being of inconsiderable size or no practical utility, is unlikely to be wanted in isolation except for the sake of mere ownership or for sentimental reasons or commemorative purposes; or
  - (c) it is frivolous or vexatious;

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- (d) a deed which—
  - (i) accompanies the application;
  - (ii) relates to a registered interest in land; and
  - (iii) is executed after that interest has been registered,does not bear a reference to the number of the title sheet of that interest.
- (3) On receipt of an application for registration, the Keeper shall forthwith note the date of such receipt, and that date shall be deemed for the purposes of this Act to be the date of registration either—
  - (a) where the application, after examination by the Keeper, is accepted by him, or
  - (b) where the application is not accepted by him on the grounds that it does not comply with subsection (1) or (2)(a) or (d) above but, without being rejected by the Keeper or withdrawn by the applicant, is subsequently accepted by the Keeper on his being satisfied that it does so comply, or has been made so to comply.

## **5 Completion of registration.**

- (1) The Keeper shall complete registration—
  - (a) in respect of an interest in land which is not a heritable security, liferent or incorporeal heritable right—
    - (i) if the interest has not previously been registered, by making up a title sheet for it in the register in accordance with section 6 of this Act, or
    - (ii) if the interest has previously been registered, by making such amendment as is necessary to the title sheet of the interest;
  - (b) in respect of an interest in land which is a heritable security, liferent or incorporeal heritable right or in respect of the matters registrable under section 2(4) of this Act by making such amendment as is necessary to the title sheet of the interest in land to which the heritable security, liferent, incorporeal heritable right or matter, as the case may be, relates,and in each case by making such consequential amendments in the register as are necessary.
- (2) Where the Keeper has completed registration under subsection (1)(a) above, he shall issue to the applicant a copy of the title sheet, authenticated by the seal of the register; and such copy shall be known as a land certificate.
- (3) Where the Keeper has completed registration in respect of a heritable security, he shall issue to the applicant a certificate authenticated by the seal of the register; and such certificate shall be known as a charge certificate.
- (4) A land certificate shall be accepted for all purposes as sufficient evidence of the contents of the title sheet of which the land certificate is a copy; and a charge certificate shall be accepted for all purposes as sufficient evidence of the facts stated in it.
- (5) Every land certificate and charge certificate shall contain a statement as to indemnity by the Keeper under Part II of this Act.

## **6 The title sheet.**

- (1) Subject to subsection (3) below, the Keeper shall make up and maintain a title sheet of an interest in land in the register by entering therein—

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- (a) a description of the land which shall consist of or include a description of it based on the Ordnance Map, and, where the interest is that of the proprietor of the *dominium utile* or the lessee under a long lease and the land appears to the Keeper to extend to 2 hectares or more, its area as calculated by the Keeper;
  - (b) the name and designation of the person entitled to the interest in the land and the nature of that interest;
  - (c) any subsisting entry in the Register of Inhibitions and Adjudications adverse to the interest;
  - (d) any heritable security over the interest;
  - (e) any enforceable real right pertaining to the interest or subsisting real burden or condition affecting the interest;
  - (f) any exclusion of indemnity under section 12(2) of this Act in respect of the interest;
  - (g) such other information as the Keeper thinks fit to enter in the register.
- (2) The Keeper shall enter a real right or real burden or condition in the title sheet by entering its terms or a summary of its terms therein; and such a summary shall, unless it contains a reference to a further entry in the title sheet wherein the terms of the real right, burden or condition are set out in full be presumed to be a correct statement of the terms of the right, burden or condition.
- (3) The Keeper’s duty under subsection (1) above shall not extend to entering in the title sheet any over-feuduty or over-rent exigible in respect of the interest in land, but he may so enter any such over-feuduty or over-rent.
- (4) Any overriding interest which appears to the Keeper to affect an interest in land—
- (a) shall be noted by him in the title sheet of that interest if it has been disclosed in any document accompanying an application for registration in respect of that interest;
  - (b) may be so noted if—
    - (i) application is made to him to do so;
    - (ii) the overriding interest is disclosed in any application for registration; or
    - (iii) the overriding interest otherwise comes to his notice.
- In this subsection “overriding interest” does not include the interest of <sup>F1</sup>(i) a lessee under a lease which is not a long lease <sup>F2</sup>and
- (ii) a non-entitled spouse within the meaning of section 6 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981.]
- (5) The Keeper shall issue, to any person applying, a copy, authenticated as the Keeper thinks fit, of any title sheet, part thereof, or of any document referred to in a title sheet; and such copy, which shall be known as an office copy, shall be accepted for all purposes as sufficient evidence of the contents of the original.

#### Textual Amendments

**F1** (i) inserted by [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981 \(c. 59, SIF 49:6\)](#), s. [6\(4\)\(a\)\(i\)](#)

**F2** Words inserted by [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981 \(c. 59, SIF 49:6\)](#), s. [6\(4\)\(a\)\(ii\)](#)

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## 7 Ranking.

- (1) Without prejudice to any express provision as to ranking in any deed or any other provision as to ranking in, or having effect by virtue of, any enactment or rule of law, the following provisions of this section shall have effect to determine the ranking of titles to interests in land.
- (2) Titles to registered interests in land shall rank according to the date of registration of those interests.
- (3) A title to a registered interest and a title governed by a deed recorded in the Register of Sasines shall rank according to the respective dates of registration and recording.
- (4) Where the date of registration or recording of the titles to two or more interests in land is the same, the titles to those interests shall rank equally.

## 8 Continuing effectiveness of recording in Register of Sasines.

- (1) Subject to subsection (3) below, the only means of creating or affecting a real right or a real obligation relating to anything to which subsection (2) below applies shall be by recording a deed in the Register of Sasines.
- (2) This subsection applies to—
  - (a) an interest in land which is to be transferred or otherwise affected by—
    - (i) an instrument which, having been recorded before the commencement of this Act in the Register of Sasines with an error or defect; or
    - (ii) a deed which, having been recorded before the commencement of this Act in the Register of Sasines with an error or defect in the recording, has not, before such commencement, been re-presented, corrected as necessary, for the purposes of recording of new under section 143 of the <sup>M3</sup>Titles to Land Consolidation (Scotland) Act 1868;

In this paragraph, “instrument” has the same meaning as in section 3 of the said Act of 1868.

  - (b) a registered interest in land which has been absorbed, otherwise than by operation of prescription, into another interest in land the title to which is governed by a deed recorded in the Register of Sasines;
  - (c) anything which is not registrable under subsections (1) to (4) of section 2 of this Act and in respect of which, immediately before the commencement of this Act, a real right or obligation could be created or affected by recording a deed in the Register of Sasines.
- (3) Nothing in subsection (1) above shall prejudice any other means, other than by registration, of creating or affecting real rights or obligations under any enactment or rule of law.
- (4) Except as provided in this section, the Keeper shall reject any deed submitted for recording in the Register of Sasines.

### Marginal Citations

M3 1868 c. 101.

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## 9 Rectification of the register.

- (1) Subject to subsection (3) below, the Keeper may, whether on being so requested or not, and shall, on being so ordered by the court or the Lands Tribunal for Scotland, rectify any inaccuracy in the register by inserting, amending or cancelling anything therein.
- (2) Subject to subsection (3)(b) below, the powers of the court and of the Lands Tribunal for Scotland to deal with questions of heritable right or title shall include power to make orders for the purposes of subsection (1) above.
- (3) If rectification under subsection (1) above would prejudice a proprietor in possession—
  - (a) the Keeper may exercise his power to rectify only where—
    - (i) the purpose of the rectification is to note an overriding interest or to correct any information in the register relating to an overriding interest;
    - (ii) all persons whose interests in land are likely to be affected by the rectification have been informed by the Keeper of his intention to rectify and have consented in writing;
    - (iii) the inaccuracy has been caused wholly or substantially by the fraud or carelessness of the proprietor in possession; or
    - (iv) the rectification relates to a matter in respect of which indemnity has been excluded under section 12(2) of this Act;
  - (b) the court or the Lands Tribunal for Scotland may order the Keeper to rectify only where sub-paragraph (i), (iii) or (iv) of paragraph (a) above applies <sup>F3</sup>or the rectification is consequential on the making of an order under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.]

<sup>F4</sup>(3A) Where a rectification of an entry in the register is consequential on the making of an order under section 8 of the said Act of 1985, the entry shall have effect as rectified as from the date when the entry was made:

Provided that the court, for the purpose of protecting the interests of a person to whom section 9 of that Act applies, may order that the rectification shall have effect as from such later date as it may specify.]

- (4) In this section—
  - (a) “the court” means any court having jurisdiction in questions of heritable right or title;
  - (b) “overriding interest” does not include the interest of
    - <sup>F5</sup>(i) a lessee under a lease which is not a long lease <sup>F6</sup>and
    - (ii) a non-entitled spouse within the meaning of section 6 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981.]

### Textual Amendments

- F3** Added at the end of s.9(3)(b) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 61:1), s. 59, Sch. 2 para. 21(a)
- F4** S. 9(3A) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 61:1), s. 59, Sch. 2 para. 21(b)
- F5** Word inserted by Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59, SIF 49:6), s. 6(4)(b)(i)



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**F6** Words inserted by [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981 \(c. 59, SIF 49:6\)](#), s. [6\(4\)\(b\)\(ii\)](#)

## 10 Positive prescription in respect of registered interests in land.

Section 1 of the <sup>M4</sup> Prescription and Limitation (Scotland) Act 1973 shall have effect as if—

- (a) after “ followed” in paragraph (b) of subsection (1) there was inserted “ (i) ” and for the words from “ then ” to the end of that subsection there were inserted “,or
  - (ii) registration of that interest in favour of that person in the Land Register of Scotland, subject to an exclusion of indemnity under section 12(2) of the Land Registration (Scotland) Act 1979,

then, as from the expiration of the said period, the validity of the title so far as relating to the said interest in the particular land shall be exempt from challenge.

(1A) Subsection (1) above shall not apply where—

- (a) possession was founded on the recording of a deed which is invalid *ex facie* or was forged; or
  - (b) possession was founded on registration in respect of an interest in land in the Land Register of Scotland proceeding on a forged deed and the person appearing from the Register to be entitled to the interest was aware of the forgery at the time of registration in his favour;”
- (b) at the end of subsection (2) there were added “ or which is registrable in the Land Register of Scotland. ”

### Modifications etc. (not altering text)

**C1** The text of Ss. 10, 23, 29(1)(4), Sch. 2 paras. 1, 2, 3, 4, 5, 6, Sch. 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

### Marginal Citations

**M4** 1973 c. 52.

## 11 Transitional provisions for Part I.

- (1) If an application for registration relates to land no part of which is in an operational area, the Keeper may nevertheless accept that application as if it related to land wholly within an operational area, and if the Keeper has so accepted such an application, the provisions of this Act relating to registration then in force shall apply in relation to that application.
- (2) An application for registration which relates to land which is partly in an operational area shall be treated as if it related to land wholly in that area, and the provisions of this Act relating to registration in force shall apply in relation to that application.

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- (3) In this section an “operational area” means an area in respect of which the provisions of this Act relating to registration have come into operation.

## PART II

### INDEMNITY IN RESPECT OF REGISTERED INTERESTS IN LAND

#### 12 Indemnity in respect of loss.

- (1) Subject to the provisions of this section, a person who suffers loss as a result of—
- (a) a rectification of the register made under section 9 of this Act;
  - (b) the refusal or omission of the Keeper to make such a rectification;
  - (c) the loss or destruction of any document while lodged with the Keeper;
  - (d) an error or omission in any land or charge certificate or in any information given by the Keeper in writing or in such other manner as may be prescribed by rules made under section 27 of this Act,
- shall be entitled to be indemnified by the Keeper in respect of that loss.
- (2) Subject to section 14 of this Act, the Keeper may on registration in respect of an interest in land exclude, in whole or in part, any right to indemnity under this section in respect of anything appearing in, or omitted from, the title sheet of that interest.
- (3) There shall be no entitlement to indemnity under this section in respect of loss where—
- (a) the loss arises as a result of a title prevailing over that of the claimant in a case where—
    - (i) the prevailing title is one in respect of which the right to indemnity has been partially excluded under subsection (2) above, and
    - (ii) such exclusion has been cancelled but only on the prevailing title having been fortified by prescription;
  - (b) the loss arises in respect of a title which has been reduced [<sup>F7</sup>, whether or not under subsection (4) of section 34, or subsection (5) of section 36, of the Bankruptcy (Scotland) Act 1985 (or either of those subsections as applied by sections 615A(4) and 615B of the Companies Act 1985, respectively)] as a gratuitous alienation or fraudulent preference, or has been reduced or varied by an order under section 6(2) of the <sup>M5</sup>Divorce (Scotland) Act 1976 [<sup>F8</sup>or by an order made by virtue of section 29 of the Matrimonial and Family Proceedings Act 1984] (orders relating to settlements and other dealings) [<sup>F9</sup>or has been set aside or varied by an order under section 18(2) (orders relating to avoidance transactions) of the Family Law (Scotland) Act 1985];
  - (c) the loss arises in consequence of the making of a further order under section 5(2) of the <sup>M6</sup>Presumption of Death (Scotland) Act 1977 (effect on property rights of recall or variation of decree of declarator of presumed death);
  - (d) the loss arises as a result of any inaccuracy in the delineation of any boundaries shown in a title sheet, being an inaccuracy which could not have been rectified by reference to the Ordnance Map, unless the Keeper has expressly assumed responsibility for the accuracy of that delineation;
  - (e) the loss arises, in the case of land extending to 2 hectares or more the area of which falls to be entered in the title sheet of an interest in that land under section 6(1)(a) of this Act, as a result of the Keeper’s failure to enter such

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- area in the title sheet or, where he has so entered such area, as a result of any inaccuracy in the specification of that area in the title sheet;
- (f) the loss arises in respect of an interest in mines and minerals and the title sheet of any interest in land which is or includes the surface land does not expressly disclose that the interest in mines and minerals is included in that interest in land;
  - (g) the loss arises from inability to enforce a real burden or condition entered in the register, unless the Keeper expressly assumes responsibility for the enforceability of that burden or condition;
  - (h) the loss arises in respect of an error or omission in the noting of an overriding interest;
  - (j) the loss is suffered by—
    - (i) a beneficiary under a trust in respect of any transaction entered into by its trustees or in respect of any title granted by them the validity of which is unchallengeable by virtue of section 2 of the <sup>M7</sup>Trusts (Scotland) Act 1961 (validity of certain transactions by trustees), or as the case may be, section 17 of the <sup>M8</sup>Succession (Scotland) Act 1964 (protection of persons acquiring title), or
    - (ii) a person in respect of any interest transferred to him by trustees in purported implement of trust purposes;
  - (k) the loss arises as a result of an error or omission in an office copy as to the effect of any subsisting adverse entry in the Register of Inhibitions and Adjudications affecting any person in respect of any registered interest in land, and that person's entitlement to that interest is neither disclosed in the register nor otherwise known to the Keeper;
  - (l) the claimant is the proprietor of the dominant tenement in a servitude, except insofar as the claim may relate to the validity of the constitution of that servitude;
  - (m) the claimant is a superior, a creditor in a ground annual or a landlord under a long lease and the claim relates to any information—
    - (i) contained in the feu writ, the contract of ground annual or the lease, as the case may be, and
    - (ii) omitted from the title sheet of the interest of the superior, creditor or landlord,(except insofar as the claim may relate to the constitution or amount of the feuduty, ground annual or rent and adequate information has been made available to the Keeper to enable him to make an entry in the register in respect of such constitution or amount or to the description of the land in respect of which the feuduty, ground annual or rent is payable);
  - (n) the claimant has by his fraudulent or careless act or omission caused the loss;
  - (o) the claim relates to the amount due under a heritable security.
  - [<sup>F10</sup>(p) the loss arises from a rectification of the register consequential on the making of an order under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.]
- (4) A refusal or omission by the Keeper to enter in a title sheet—
- (a) any over-feuduty or over-rent exigible in respect of a registrable interest;
  - (b) any right alleged to be a real right on the ground that by virtue of section 6 of this Act he has no duty to do so since it is unenforceable,
- shall not by itself prevent a claim to indemnity under this section.

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#### Textual Amendments

- F7** Words inserted by [Bankruptcy \(Scotland\) Act 1985 \(c. 66, SIF 11:2\)](#), s. 75(1), **Sch. 7 para. 15**
- F8** Words inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), s. 46(1), **Sch. 1 para. 28**
- F9** Words added at the end of s. 12(3)(b) by [Family Law \(Scotland\) Act 1985 \(c. 37, SIF 49:3\)](#), s. 28(1), **Sch. 1 para. 10**
- F10** [S. 12\(3\)\(p\)](#) added by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 30\)](#), s. 59, **Sch. 2 para. 22**

#### Marginal Citations

- M5** 1976 c. 39.
- M6** 1977 c. 27.
- M7** 1961 c. 57.
- M8** 1964 c. 41.

### 13 Provisions supplementary to section 12.

- (1) Subject to any order by the Lands Tribunal for Scotland or the court for the payment of expenses in connection with any claim disposed of by the Lands Tribunal under section 25 of this Act or the court, the Keeper shall reimburse any expenditure reasonably and properly incurred by a person in pursuing *prima facie* well-founded claim under section 12 of this Act, whether successful or not.
- (2) On settlement of any claim to indemnity under the said section 12, the Keeper shall be subrogated to all rights which would have been available to the claimant to recover the loss indemnified.
- (3) The Keeper may require a claimant, as a condition of payment of his claim, to grant, at the Keeper's expense, a formal assignation to the Keeper of the rights mentioned in subsection (2) above.
- (4) If a claimant to indemnity has by his fraudulent or careless act or omission contributed to the loss in respect of which he claims indemnity, the amount of the indemnity to which he would have been entitled had he not so contributed to his loss shall be reduced proportionately to the extent to which he has so contributed.

### 14 The foreshore.

- (1) If—
  - (a) it appears to the Keeper that—
    - (i) an interest in land which is registered or in respect of which an application for registration has been made consists, in whole or in part, of foreshore or a right in foreshore, or might so consist, and
    - (ii) discounting any other deficiencies in his title in respect of that foreshore or right in foreshore, the person registered or, as the case may be, applying to be registered as entitled to the interest will not have an unchallengeable title in respect of the foreshore or the right in foreshore until prescription against the Crown has fortified his title in that respect, and

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- (b) the Keeper wholly excludes or proposes wholly to exclude rights to indemnity in respect of that person's entitlement to that foreshore or that right in foreshore, and is requested by that person not to do so,  
the Keeper shall notify the Crown Estate Commissioners that he has been so requested.
- (2) If the Crown Estate Commissioners have—
- (a) within one month of receipt of the notification referred to in subsection (1) above, given to the Keeper written notice of their interest, and
- (b) within three months of that receipt informed the Keeper in writing that they are taking steps to challenge that title,
- the Keeper shall—
- (i) during the prescriptive period, or
- (ii) until such time as it appears to the Keeper that the Commissioners are no longer taking steps to challenge that title or that their challenge has been unsuccessful,
- whichever is the shorter, continue wholly to exclude or, as the case may be, wholly exclude right to indemnity in respect of that person's entitlement to that foreshore or that right in foreshore.
- (3) This section, or anything done under it, shall be without prejudice to any other right or remedy available to any person in respect of foreshore or any right in foreshore.

### PART III

#### SIMPLIFICATION AND EFFECT OF DEEDS

#### 15 Simplification of deeds relating to registered interests.

- (1) Land in respect of which an interest has been registered shall be sufficiently described in any deed relating to that interest if it is described by reference to the number of the title sheet of that interest, and accordingly, section 13 of and Schedule G to the <sup>M9</sup>Titles to Land Consolidation (Scotland) Act 1868, section 61 of the <sup>M10</sup>Conveyancing (Scotland) Act 1874, sections 8 and 24(2) of and Schedules D and J to the <sup>M11</sup>Conveyancing (Scotland) Act 1924 and Note 1 of Schedule 2 to the <sup>M12</sup>Conveyancing and Feudal Reform (Scotland) Act 1970 (sufficiency of description by reference) shall not apply to such a deed.
- (2) It shall not be necessary in any deed relating to a registered interest in land to insert or refer to any real burden, condition, provision or other matter affecting that interest if that real burden, condition, provision or other matter has been entered in the title sheet of that interest under section 6(1)(e) of this Act, and, accordingly, in such a case—
- (a) sections 10 and 146 of and Schedule D to the <sup>M13</sup>Titles to Land Consolidation (Scotland) Act 1868, in section 32 of the <sup>M14</sup>Conveyancing (Scotland) Act 1874, the words from the beginning to “shall be sufficient” and in section 9 of the <sup>M15</sup>Conveyancing (Scotland) Act 1924, the proviso to subsection (1), subsections (3) and (4) and Schedule E to the said Act of 1924 (importation of burdens etc. by reference) shall not apply to such a deed; and
- (b) such a deed shall import for all purposes a full insertion of the real burden, condition, provision or other matter.

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- (3) It shall not be necessary in any deed relating to a registered interest in land, being a deed referred to in section 3 of the <sup>M16</sup>Conveyancing (Scotland) Act 1924 or section 12 of the <sup>M17</sup>Conveyancing and Feudal Reform (Scotland) Act 1970 (dispositions etc. by persons uninfert), to deduce title, if evidence of sufficient midcouples or links between the uninfert proprietor and the person last infert are produced to the Keeper on registration in respect of that interest inland and, accordingly, in such a case, section 5 of and Form 1 of Schedule A and Note 2 of Schedule K to the said Act of 1924 and Notes 2 and 3(b) of Schedule 2 to the <sup>M18</sup>Conveyancing and Feudal Reform (Scotland) Act 1970 (further provisions to deduction of title) as well as the said section 3 and the said section 12, shall not apply to such a deed, which shall be as valid as if it had contained a clause of deduction of title.
- (4) It shall not be necessary, in connection with any deed relating to a registered interest in land, to include an assignation of any obligation or right of relief or to narrate the series of writs by which the grantor of the deed became entitled to enforce that obligation or exercise that right if the obligation or right has been entered in the title sheet of that interest and, accordingly, in such a case—
- (a) section 50 of and Schedule M to the <sup>M19</sup>Conveyancing (Scotland) Act 1874 (form and effect of assigning right of relief or other right affecting land) shall not apply to such a deed; and
  - (b) such a deed shall for all purposes import a valid and complete assignation of that obligation or right.

#### **Marginal Citations**

**M9** 1868 c. 101.  
**M10** 1874 c. 94.  
**M11** 1924 c. 27.  
**M12** 1970 c. 35.  
**M13** 1868 c. 101.  
**M14** 1874 c. 94.  
**M15** 1924 c. 27.  
**M16** 1924 c. 27.  
**M17** 1970 c. 35.  
**M18** 1970 c. 35.  
**M19** 1874 c. 94.

## **16 Omission of certain clauses in deeds.**

- (1) It shall not be necessary to insert in any deed executed after the commencement of this Act which conveys an interest in land a clause of assignation of writs and any such deed shall, unless specially qualified, import an assignation to the grantee of the title deeds and searches and all deeds not duly recorded, and shall—
- (a) impose on the grantor or any successor an obligation—
    - (i) to deliver to the grantee all title deeds and searches relating exclusively to the interest conveyed;
    - (ii) to make forthcoming to the grantee and his successors at his or their expense on all necessary occasions any title deeds and searches which remain in the possession of the grantor or any successor and which relate partly to the interest conveyed; and

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- (b) import an assignation to the grantee by the grantor of his right to require any person having custody thereof to exhibit or deliver any title deeds and searches remaining undelivered; and
  - (c) impose on the grantee or any successor an obligation to make forthcoming on all necessary occasions to any party having an interest therein any deeds and searches which have been delivered to the grantee but which relate partly to interests other than the interest conveyed to the grantee.
- (2) It shall not be necessary to insert in any deed executed after the commencement of this Act which grants land in feu a clause of assignation of writs, and any such deed shall, unless specially qualified, import an assignation to the grantee of the title deeds and searches to the effect of maintaining and defending the right of the grantee in the feu; and the superior shall be held to be obliged for that purpose to make the title deeds and searches forthcoming to the grantee on all necessary occasions at the latter's expense.
- (3) It shall not be necessary to insert in any deed conveying an interest in land executed after the commencement of this Act a clause of assignation of rents or a clause of obligation of relief, and any such deed so executed shall, unless specially qualified, import—
- (a) an assignation of the rents payable—
    - (i) in the case of backhand rents, at the legal terms following the date of entry, and
    - (ii) in the case of forehand rents, at the conventional terms following that date;
  - (b) an obligation on the grantor to relieve the grantee of all feuduties, ground annuals, annuities and public, parochial and local burdens exigible in respect of the interest prior to the date of entry and, in the case of a grant of land in feu, of all feuduties payable by the grantor to his superiors from and after the date of entry.

#### **Modifications etc. (not altering text)**

- C2** S. 16(1)(2) modified (6.1.1994) by 1993 c. 43, ss. 97, 150(1)(d)(n), **Sch. 8 para.4(3)**; S.I. 1993/3237, **art.2**.
- C3** S. 16(1)(2) modified by Electricity Act 1989 (c. 29, SIF 44:1), ss. 70, 112(3), Sch.10 para. 5(3), **Sch. 17 para. 35(1)**
- C4** S. 16(1)(2): power to modify conferred (1.4.1994) by 1993 c. 43, ss. 59(4), 150(1)(c)(m), 154(2), Sch. 7 para. 3(4)(c); S.I. 1994/571, **art. 5**
- C5** S. 16(1)(2) modified (5.7.1994) by 1994 c. 21, ss. 12(8), 68(4)(6), **Sch. 2**, para. 4(4) (with s. 40(7))
- C6** S. 16(1)(2) modified (10.3.1995) by 1994 c. 39, s. 95, Sch. 11 paras. 3(3), **4** (with ss. 74(4), 128(8)); S.I. 1995/702, **art. 2(g)**.
- C7** S. 16(1)(2) modified (8.11.1995) by 1995 c. 37, s. 1(5), **Sch. 1 para. 5(4)(6)**
- C8** S. 16(1)(2) modified (24.7.1996) by 1996 c. 55, ss. 131(4), 149(1)(f), **Sch. 5 para. 4(4)** (with s. 43(1))
- C9** S. 16(1)(2) applied (with modifications) (1.2.2001) by 2000 c. 38, s. 63, **Sch. 6 para. 12(3)** (with ss. 105(2)(5), 106(4)); S.I. 2001/57, **art. 3**, **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)
- C10** S. 16(1)(2) applied (with modifications) (5.10.2004) by Energy Act 2004 (c. 20), ss. 38(2), 198(2) {Sch. 5 para. 6(7)} (with s. 38(2)); S.I. 2004/2575, **art. 2(1)**, Sch.
- C11** S. 16(1)(2) applied (with modifications) (5.10.2004) by Energy Act 2004 (c. 20), ss. 159(2), 198(2), **Sch. 21 para. 7(7)** (with s. 38(2)); S.I. 2004/2575, **art. 2(1)**, Sch.
- C12** S. 16(1)(2) modified (8.11.1995) by 1995 c. 37, s. 1(5), **Sch. 1 para. 5(4)(6)**
- C13** S. 16(1)(2) modified (24.7.1996) by 1996 c. 55, ss. 131(4), 149(1)(f), **Sch. 5 para. 4(4)** (with s. 43(1))

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- C14** S. 16(1)(2) modified (10.3.1995) by 1994 c. 39, s. 95, Sch. 11 paras. 3(3), 4 (with ss. 74(4), 128(8)); S.I. 1995/702, **art. 2(g)**.
- C15** S. 16(1)(2) modified (5.7.1994) by 1994 c. 21, ss. 12(8), 68(4)(6), **Sch. 2**, para. 4(4) (with s. 40(7))
- C16** S. 16(1)(2) modified by Electricity Act 1989 (c. 29, SIF 44:1), ss. 70, 112(3), Sch.10 para. 5(3), **Sch. 17 para. 35(1)**
- C17** S. 16(1)(2) modified (6.1.1994) by 1993 c. 43, ss. 97, 150(1)(d)(n), **Sch. 8 para.4(3)**; S.I. 1993/3237, **art.2**.  
S. 16(1)(2): Power to modify conferred (1.4.1994) by 1993 c. 43, ss. 59(4), 150(1)(c)(m), 154(2), Sch. 7 para. 3(4)(c); S.I. 1994/571, **art. 5**  
S. 16(1)(2) applied (with modifications) (1.2.2001) by 2000 c. 38, s. 63, **Sch. 6 para. 12(3)** (with ss. 105(2)(5), 106(4)); S.I. 2001/57, art. 3, **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)

## 17 Deeds of declaration of conditions.

- (1) A land obligation specified in a deed executed after the commencement of this Act under section 32 of the <sup>M20</sup>Conveyancing (Scotland) Act 1874 (deeds of conditions etc.) shall—
- on the recording of such deed in the Register of Sasines;
  - on the obligation being registered,
- become a real obligation affecting the land to which it relates, unless it is expressly stated in such deed that the provisions of this section are not to apply to that obligation.
- (2) In this section “land obligation” has the meaning assigned to it by section 1(2) of the <sup>M21</sup>Conveyancing and Feudal Reform (Scotland) Act 1970.

### Modifications etc. (not altering text)

- C18** S. 17 applied with modifications by Registration of Leases (Scotland) Act 1857 (c. 26, SIF 75:2), **s. 3(5)** as inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 75:2), **s. 3**

### Marginal Citations

- M20** 1874 c. 94.  
**M21** 1970 c. 35.

## 18 Variations and discharges of land obligations.

- (1) The terms of any—
- deed recorded in the Register of Sasines, whether before or after the commencement of this Act, whereby a land obligation is varied or discharged;
  - registered variation or discharge of a land obligation,
- shall be binding on the singular successors of the person entitled to enforce the land obligation, and of the person on whom the land obligation was binding.
- (2) In this section “land obligation” has the meaning assigned to it by section 1(2) of the <sup>M22</sup>Conveyancing and Feudal Reform (Scotland) Act 1970.

### Marginal Citations

- M22** 1970 c. 35.



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## **19 Agreement as to common boundary.**

- (1) This section shall apply where the titles to adjoining lands disclose a discrepancy as to the common boundary and the proprietors of those lands have agreed to, and have executed a plan of, that boundary.
- (2) Where one or both of the proprietors holds his interest or their interest in the land or lands by virtue of a deed or, as the case may be, deeds recorded in the Register of Sasines, the agreement and plan may be recorded in the Register of Sasines and on being so recorded shall be binding on the singular successors of that proprietor or, as the case may be, those proprietors and on all other persons having an interest in the land or, as the case may be, the lands.
- (3) Where one or both of the interests in the lands is or are registered interests, the plan with a docquet thereon executed by both proprietors referring to the agreement shall be registrable as affecting that interest or those interests, and on its being so registered its effect shall be binding on the singular successors of the proprietor of that interest or, as the case may be, the proprietors of those interests and on all other persons having an interest in the land or, as the case may be, the lands.

## **PART IV**

### **MISCELLANEOUS AND GENERAL**

## **20 Tenants-at-will.**

- (1) A tenant-at-will shall be entitled, in accordance with this section, to acquire his landlord's interest as such in the land which is subject to the tenancy-at-will (hereinafter referred to as the "tenancy land").
- (2) Subject to section 21(2) of this Act, a tenant-at-will who wishes to acquire his landlord's interest under this section shall serve notice on him in, or as nearly as may be in, the form set out in Schedule 1 to this Act.
- (3) There shall be payable by the tenant-at-will to his landlord by way of compensation in respect of an acquisition of tenancy land such amount as may be agreed between them or, failing agreement, an amount equal to—
  - (a) the value of the tenancy land, not including any buildings thereon, but assuming that planning permission for residential purposes has been granted in respect of it; or
  - (b) one twenty-fifth of the value of the tenancy land, including any buildings thereon,whichever is the lesser, together with—
  - (i) subject to subsection (4) below, such further amount as may be required to discharge any heritable security over the tenancy land or, where the heritable security is granted over land including the tenancy land, such further amount (being such proportion of the sum secured over the land which includes the tenancy land as may reasonably be regarded as attributable to the tenancy land) as is required to restrict the heritable security so as to disburden the tenancy land; and

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- (ii) such further amount as may be required to redeem any feuduty, ground annual or other periodic payment falling to be redeemed under section 5 of the <sup>M23</sup>Land Tenure Reform (Scotland) Act 1974.
- (4) In respect of any acquisition under this section, the amount mentioned in paragraph (i) of subsection (3) above shall not exceed ninety per cent. of the amount fixed by virtue of paragraph (a) or (b) of that subsection.
- (5) The tenant-at-will shall reimburse the expenses reasonably and properly incurred by the landlord in conveying his interest in the tenancy land to the tenant-at-will, including the expenses of any discharge, restriction or redemption under subsection (3) above.
- (6) The landlord shall, on there being tendered to him the compensation and expenses specified in this section, convey his interest in the tenancy land to his tenant-at-will on such terms and conditions (additional to those relating to compensation and expenses under subsections (3), (4) and (5) above) as may be agreed between them or, failing agreement, as may be appropriate to the circumstances of the case and free of all heritable securities, and all such feuduties, ground annuals or other periodical payments as are mentioned in subsection (3)(ii) above.
- (7) A heritable creditor whose security is over the tenancy land or land which includes the tenancy land, on there being tendered to him the amount mentioned in paragraph (i) of subsection (3) above (as read with subsection (4) above) and his reasonable expenses, shall discharge or, as the case may be, restrict the security so as to disburden the tenancy land.
- (8) In this section and in sections 21 and 22 of this Act, “tenant-at-will” means a person—
- (a) who, not being—
    - (i) a tenant under a lease;
    - (ii) a kindly tenant; or
    - (iii) a tenant or occupier by virtue of any enactment,
 is by custom and usage the occupier (actual or constructive) of land on which there is a building or buildings erected or acquired for value by him or any predecessor of his;
  - (b) who is under an obligation to pay a ground rent to the owner of the land in respect of the said land but not in respect of the building or buildings on it, or would have been under such an obligation if the ground rent had not been redeemed; and
  - (c) whose right of occupancy of the land is without ish.
- (9) In subsections (5) and (6) above, references to the conveying of the landlord’s interest in tenancy land shall be construed in accordance with section 21(10) of this Act.

#### **Marginal Citations**

**M23** 1974 c. 38.

## **21 Provisions supplementary to section 20.**

- (1) Any question arising under section 20 of this Act as to—
- (a) whether a person is a tenant-at-will;

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- (b) the extent or boundaries of any tenancy land;
  - (c) the value of any tenancy land or as to what proportion of any sum secured over any land may reasonably be regarded as attributable to any tenancy land included in that land;
  - (d) whether any expenses are reasonably and properly incurred;
  - (e) what are appropriate terms and conditions,
- shall be determined, on the application of the tenant-at-will, a person claiming to be the tenant-at-will or the landlord, by the Lands Tribunal for Scotland.
- (2) The Lands Tribunal for Scotland may, on the application of a tenant-at-will who wishes to acquire his landlord's interest in the tenancy land under section 20 of this Act, if they are satisfied that such landlord is unknown or cannot be found, make an order—
- (a) dispensing with notice under section 20(2) above;
  - (b) fixing an amount by way of compensation in accordance with section 20(3) of this Act;
  - (c) determining appropriate terms and conditions on which the landlord's interest in the tenancy land should be conveyed,
- for the purposes of the acquisition by the tenant-at-will of his landlord's said interest.
- (3) If the landlord—
- (a) fails to convey his interest in accordance with section 20(6) of this Act, or
  - (b) is unknown or cannot be found,
- the tenant-at-will may apply to the sheriff for an order dispensing with the execution by the landlord of the conveyance in favour of the tenant-at-will and directing the sheriff clerk to execute the conveyance instead of the landlord, and on making such an order the sheriff may require the tenant-at-will to consign in court any sums payable by the tenant-at-will under section 20(3) and (5) of this Act or, as the case may be, any sums specified in an order under subsection (2) above.
- (4) Where, in pursuance of an order made by the sheriff under this section, a conveyance is executed by the sheriff clerk on behalf of the landlord, such conveyance shall have the like force and effect as if it had been executed by such landlord.
- (5) The sheriff may, on the application of any party, order the investment, payment or distribution of any sums consigned in court under subsection (3) above, and in so doing the sheriff shall have regard to the respective interests of any parties appearing to have a claim on such sums.
- (6) Nothing in section 5 of the <sup>M24</sup>Sheriff Courts (Scotland) Act 1907 shall entitle any party to an application to the sheriff under this section to require it to be remitted to the Court of Session on the grounds that it relates to a question of heritable right or title.
- (7) A landlord shall have power to execute a valid conveyance in pursuance of this section notwithstanding that he may be under any such disability as is mentioned in section 7 of the <sup>M25</sup>Lands Clauses Consolidation (Scotland) Act 1845.
- (8) Where a person other than the landlord is infert in the subjects to be conveyed, references in section 20 of this Act and in this section to the landlord shall be construed as references to the landlord and such other person for their respective rights.
- (9) Any condition or provision to the effect that—
- (a) the superior of any feu shall be entitled to a right of pre-emption in the event of a sale thereof or any part thereof by the proprietor of the feu, or

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- (b) any other person with an interest in land shall be entitled to a right of pre-emption in the event of a sale thereof or of any part thereof by the proprietor for the time being,

shall not be capable of being enforced where the sale is by a landlord to his tenant-at-will under section 20 of this Act.

- (10) In this section and in section 20(5) and (6) of this Act, references to the conveying of the landlord's interest in the tenancy land shall be construed as references to a grant by him of a feu of that land or, where the landlord is a lessee under a lease, an assignation of the lease but only as regards the tenancy land and, in this section, "conveyance" shall be construed accordingly.

#### Marginal Citations

**M24** 1907 c. 51.

**M25** 1845 c. 19.

## 22 Provisions supplementary to section 20: heritable creditors.

- (1) The provisions of this section shall have effect where a heritable security over tenancy land or over land which includes tenancy land falls to be discharged or restricted under section 20(7) of this Act.
- (2) The heritable creditor shall be entitled for his interest to apply, and to be a party to an application, under section 21(1) of this Act.
- (3) The Lands Tribunal for Scotland, if they are satisfied that the heritable creditor is unknown or cannot be found, may, on the application of the tenant-at-will or his landlord or both, make an order fixing the amount required to discharge or restrict the heritable security so as to disburden the tenancy land.
- (4) If the heritable creditor—
- (a) fails to disburden the tenancy land in accordance with section 20(7) of this Act, or
  - (b) is unknown or cannot be found,
- the tenant-at-will or the landlord or both may apply to the sheriff for an order dispensing with the execution by the heritable creditor of the deed of discharge or restriction in favour of the landlord and directing the sheriff clerk to execute the deed instead of the heritable creditor and on making such an order the sheriff may require the landlord to consign in court any amount or expenses which the landlord requires to pay for the purposes of section 20(3)(i), (4) and (5) of this Act to the heritable creditor or, as the case may be, any amount specified in an order under subsection (3) above.
- (5) Where, in pursuance of an order made by the sheriff under this section, a deed of discharge or restriction is executed by the sheriff clerk on behalf of the heritable creditor, such deed shall have the like force and effect as if it had been executed by such heritable creditor.
- (6) The sheriff may, on the application of any party, order the investment, payment or distribution of any amount consigned in court under subsection (4) above, and in so doing the sheriff shall have regard to the respective interests of any parties appearing to have a claim on such amount.

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- (7) Nothing in section 5 of the <sup>M26</sup>Sheriff Courts (Scotland) Act 1907 shall entitle any party to an application to the sheriff under this section to require it to be remitted to the Court of Session on the grounds that it relates to a question of heritable right or title.
- (8) A heritable creditor shall have power to execute a valid deed of discharge or restriction in pursuance of this section notwithstanding that he may be under any such disability as is mentioned in section 7 of the <sup>M27</sup>Lands Clauses Consolidation (Scotland) Act 1845.

#### Marginal Citations

**M26** 1907 c. 51.

**M27** 1845 c. 19.

### [<sup>F11</sup>22A Power of sheriff to grant renewals of certain long leases.

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- (1) Where a landlord has failed to renew a long lease in implement of an obligation in or under it, the sheriff may, on summary application by the tenant, make an order directing the sheriff clerk to execute a renewal of the lease instead of the landlord.
- (2) On making an order under subsection (1) above, the sheriff may require the tenant to consign in court such amount (whether by way of rent or expenses or otherwise) in respect of the lease and its renewal as appears to the sheriff to be lawfully due and payable or appears to him would have been so due and payable had the landlord duly renewed the lease.
- (3) A renewal executed under this section shall have the like force and effect as if it were executed by the landlord.
- (4) Without prejudice to subsection (7)(a) below, a landlord shall be regarded, for the purposes of subsection (1) above, as having failed to renew a lease in implement of an obligation in or under it if, having been given written notice in accordance with subsection (5) below by the tenant that he requires the landlord, in implement of the obligation, to renew the lease, the landlord has failed to do so when he was obliged to and continues so to fail.
- (5) Notice is in accordance with this subsection if it is given not less than 3 months before the lodging of the summary application.
- (6) Subsection (4) above is subject to subsection (7)(b) below and to any provision in or under the lease for earlier, or a longer period of, notice requiring renewal of the lease than that mentioned in subsection (5) above.
- (7) If the sheriff is satisfied that a landlord is unknown or cannot be found, he may—
  - (a) in a case where the tenant is thereby prevented from bringing the landlord, in accordance with the lease, under an obligation to renew it, order that the landlord shall be regarded, for the purposes of subsection (1) above, as having failed to renew the lease in implement of an obligation under it; and
  - (b) in any other case, dispense with notice under subsection (4) above.
- (8) The sheriff may, on the application of any party, order the investment, payment or distribution of any sums consigned in court under subsection (2) above, and in so

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doing the sheriff shall have regard to the respective interests of any parties appearing to have a claim on such sums.

- (9) The sheriff’s power under subsection (8) above extends to ordering that any award of expenses of the application under this section be paid out of any sums consigned in court under subsection (2) above.]

#### Textual Amendments

**F11** S. 22A inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 75:2), s. 2

## 23 Fees.

For section 25 of the <sup>M28</sup> Land Registers (Scotland) Act 1868 (power of Treasury to prepare amended tables of fees for registration), there shall be substituted the following section—

### “25 Fees.

The Secretary of State, with the consent of the Treasury, may from time to time by order made by statutory instrument fix fees payable in respect of registration or recording in any register under the management and control of the Keeper of the Registers of Scotland and in respect of the provision by the Keeper of searches, reports, certificates or other documents or copies of any document or of information from any such register; and the amount of the fees so fixed shall not be greater than is reasonably sufficient for defraying the expenses of the department of the Keeper including the expenses of the improvement of the systems of such registration and recording.”

#### Modifications etc. (not altering text)

**C19** The text of Ss. 10, 23, 29(1)(4), Sch. 2 paras. 1, 2, 3, 4, 5, 6, Sch. 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

#### Marginal Citations

**M28** 1868 c. 64.

## 24 Financial provisions.

There shall be defrayed out of money provided by Parliament all expenses incurred by the Keeper in consequence of the provisions of this Act.

## 25 Appeals.

- (1) Subject to subsections (3) and (4) below, an appeal shall lie, on any question of fact or law arising from anything done or omitted to be done by the Keeper under this Act, to the Lands Tribunal for Scotland.
- (2) Subject to subsections (3) and (4) below subsection (1) above is without prejudice to any right of recourse under any enactment other than this Act or under any rule of law.

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- (3) Nothing in subsection (1) above shall enable the taking of an appeal if it is, under the law relating to *tores judicata*, excluded as a result of the exercise of any right of recourse by virtue of subsection (2) above; and nothing in subsection (2) above shall enable the exercise of any right of recourse if it is so excluded as a result of the taking of an appeal under subsection (1) above.
- (4) No appeal shall lie under this section, nor shall there be any right of recourse by virtue of this section in respect of a decision of the Keeper under section 2(1)(b) or 11(1) of this Act.

## 26 Application to Crown.

This Act shall apply to land held of the Crown and of the Prince and Steward of Scotland, and to land in which there is any other interest belonging to Her Majesty in right of the Crown or to a Government department, or held on behalf of Her Majesty for the purposes of a Government department, in like manner as it applies to other land.

## 27 Rules.

- (1) The Secretary of State may, after consultation with the Lord President of the Court of Session, make rules—
  - (a) regulating the making up and keeping of the register;
  - (b) prescribing the form of any search, report or other document to be issued or used under or in connection with this Act and regulating the issue of any such document;
  - (c) regulating the procedure on application for any registration;
  - (d) prescribing the form of deeds relating to registered interests in land;
  - (e) concerning such other matters as seem to the Secretary of State to be necessary or proper in order to give full effect to the purposes of this Act.
- (2) The power to make rules under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## 28 Interpretation, etc.

- (1) In this Act, except where the context otherwise requires—
  - “deed” has the meaning assigned to it by section 3 of the <sup>M29</sup>Titles to Land Consolidation (Scotland) Act 1868, section 3 of the <sup>M30</sup>Conveyancing (Scotland) Act 1874 and section 2 of the <sup>M31</sup>Conveyancing (Scotland) Act 1924;
  - “feu” includes blench holding and cognate expressions shall be construed accordingly;
  - “heritable security” has the same meaning as in section 9(8) of the <sup>M32</sup>Conveyancing and Feudal Reform (Scotland) Act 1970;
  - “incorporeal heritable right” does not include a right to salmon fishings;
  - “interest in land” means any estate, interest, servitude or other heritable right in or over land, including a heritable security but excluding a lease which is not a long lease;
  - “the Keeper” has the meaning assigned by section 1(2) of this Act;

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“land” includes buildings and other structures and land covered with water;  
“long lease” means a probative lease—

- (a) exceeding 20 years; or
- (b) which is subject to any provision whereby any person holding the interest of the grantor is under a future obligation, if so requested by the grantee, to renew the lease so that the total duration could (in terms of the lease, as renewed, and without any subsequent agreement, express or implied, between the persons holding the interests of the grantor and the grantee) extend for more than 20 years;

“overriding interest” means, subject to sections 6(4) and 9(4) of this Act, in relation to any interest in land, the right or interest over it of—

- (a) the lessee under a lease which is not a long lease;
- (b) the lessee under a long lease who, prior to the commencement of this Act, has acquired a real right to the subjects of the lease by virtue of possession of them;
- (c) a crofter or cottar within the meaning of section 3 or 28(4) respectively of the <sup>M33</sup>Crofters (Scotland) Act 1955, or a landholder or statutory small tenant within the meaning of section 2(2) or 32(1) respectively of the <sup>M34</sup>Small Landholders (Scotland) Act 1911;
- (d) the proprietor of the dominant tenement in a servitude;
- (e) the Crown or any Government or other public department, or any public or local authority, under any enactment or rule of law, other than an enactment or rule of law authorising or requiring the recording of a deed in the Register of Sasines or registration in order to complete the right or interest;
- (ee) [<sup>F12</sup>the operator having a right conferred in accordance with paragraph 2, 3 or 5 of Schedule 2 to the Telecommunications Act 1984 (agreements for execution of works, obstruction of access. etc.);]
- (ef) [<sup>F13</sup>a licence holder within the meaning of Part I of the Electricity Act 1989 having such a wayleave as is mentioned in paragraph 6 of Schedule 4 to that Act (wayleaves for electric lines), whether granted under that paragraph or by agreement between the parties;
- (eg) a licence holder within the meaning of Part I of the Electricity Act 1989 who is authorised by virtue of paragraph 1 of Schedule 5 to that Act to abstract, divert and use water for a generating station wholly of or mainly driven by water.]
- [<sup>F14</sup>(eh) insofar as it is an interest vesting by virtue of section 7(3) of the Coal Industry Act 1994, the Coal Authority;]
- (f) the holder of a floating charge whether or not the charge has attached to the interest;
- (g) a member of the public in respect of any public right of way or in respect of any right held inalienably by the Crown in trust for the public;
- (gg) [<sup>F15</sup>the non-entitled spouse within the meaning of section 6 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981;]
- (h) any person, being a right which has been made real, otherwise than by the recording of a deed in the Register of Sasines or by registration; or
- (i) any other person under any rule of law relating to common interest or joint or common property, not being a right or interest constituting a real right, burden or condition entered in the title sheet of the interest in land



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under section 6(1)(e) of this Act or having effect by virtue of a deed recorded in the Register of Sasines,

but does not include any subsisting burden or condition enforceable against the interest in land and entered in its title sheet under section 6(1) of this Act;

“the register” and “registered” have the meanings assigned to them respectively by subsections (1) and (3) of section 1 of this Act;

“Register of Sasines” has the same meaning as in section 2 of the<sup>M35</sup>Conveyancing (Scotland) Act 1924;

“transfer” includes transfer by operation of law.

(2) ..... F16

#### Textual Amendments

- F12** Para. (ee) inserted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109(1), Sch. 4 Para. 71, **Sch. 5 para. 45**
- F13** Paras. (ef)(eg) inserted by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1)(3), Sch. 16 para. 23, Sch. 17 paras. 33, **35**
- F14** S. 28(1)(eh) inserted (31.10.1994) by 1994 c. 21, ss. 67(1), 68(2), **Sch. 9 para. 20** (with s. 40(7)); S.I. 1994/2553, **art. 2**.
- F15** Para. (gg) inserted by [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981 \(c. 59, SIF 49:6\)](#), **s. 6(4)(c)**
- F16** S. 28(2) repealed by [Statute Law \(Repeals\) Act 1981 \(c. 19\)](#), **Sch. 1 Pt. IV**

#### Modifications etc. (not altering text)

- C20** S. 28 modified (24.3.1994) by 1994 c. i, s. 1, **Sch. Pt. III s. 14(3)** (with ss. 29, 30, 34).
- C21** S. 28 modified (24.3.1994) by 1994 c. ii, s. 1, **Sch. Pt. III s. 12(2)(3)** (with s. 28)
- C22** S. 28 modified (24.3.1994) by 1994 c. iii, s. 1, **Sch. Pt. III s. 13(3)** (with ss. 27, 32)
- C23** S. 28(1): definition of “interest in land” applied by [Property Misdescriptions Act 1991 \(c. 29, SIF 124:4\)](#), **s. 1(6)(b)**

#### Marginal Citations

- M29** 1868 c. 101.
- M30** 1874 c. 94.
- M31** 1924 c. 27.
- M32** 1970 c. 35.
- M33** 1955 c. 21.
- M34** 1911 c. 49.
- M35** 1924 c. 27.

## 29 Amendment and repeal of enactments.

- (1) The enactments specified in Schedule 2 to this Act shall have effect subject to the amendments set out in that Schedule.
- (2) Subject to subsection (3) below, any reference, however expressed, in any enactment passed before, or during the same Session as, this Act or in any instrument made before the passing of this Act under any enactment to the Register of Sasines or to the recording of a deed therein shall be construed as a reference to the register or, as the case may be, to registration.
- (3) Subsection (2) above does not apply—

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- (a) to the enactments specified in Schedule 3 to this Act;
  - (b) for the purposes of the recording of a deed in the Register of Sasines under section 8 of this Act.
- (4) The enactments specified in Schedule 4 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

#### **Modifications etc. (not altering text)**

- C24** The text of Ss. 10, 23, 29(1)(4), Sch. 2 paras. 1, 2, 3, 4, 5, 6, Sch. 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991
- C25** S. 29(2) extended by [Water \(Scotland\) Act 1980 \(c.45, SIF 130\)](#), [s. 109\(5\)](#) (as added by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23, SIF 81:2\)](#)), [Sch. 3 para. 39\(5\)](#)

### **30 Short title, extent and commencement.**

- (1) This Act may be cited as the Land Registration (Scotland) Act 1979 and extends to Scotland only.
- (2) Sections 1, 16 to 23 of this Act, this section and so much of the remainder of this Part of this Act as relates to the aforesaid provisions of this Act shall come into operation on the passing of this Act, and the other provisions of this Act shall come into operation on the appointed day, being such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed under this subsection for different areas, or for different provisions of this Act.
- (3) Any reference in any provision of this Act to the commencement of this Act shall be construed as a reference to the date on which that provision comes into operation.

#### **Subordinate Legislation Made**

- P1** [S. 30\(2\)](#) power partly exercised: 1.4.2002 appointed for specified provisions in the areas of the Counties of Inverness and Nairn by [S.S.I. 2001/309](#), [art. 2](#)  
[S. 30\(2\)](#) power partly exercised: 1.4.2003 appointed for specified provisions by [S.S.I. 2002/432](#), [art. 2](#)

#### **Modifications etc. (not altering text)**

- C26** Power of appointment conferred by [s. 30\(2\)](#) partly exercised by [S.I. 1980/1412](#), 1982/520, 1983/745, 1985/501  
[S. 30\(2\)](#) power partly exercised (13.2.1992): 1.10.1992 appointed for specified provisions in the area of the County of Clackmannan by [S.I. 1992/815](#), [art. 2](#).  
[S. 30\(2\)](#) power partly exercised (26.8.1992): 1.4.1993 appointed for specified provisions in the area of the County of Stirling by [S.I. 1992/2060](#), [art. 2](#).  
[S. 30\(2\)](#) power partly exercised (25.3.1993): 1.10.1993 appointed for specified provisions in the area of the County of West Lothian by [S.I. 1993/922](#), [art. 2](#).  
[S. 30\(2\)](#) power partly exercised (27.9.2000): 1.4.2001 appointed for specified provisions in the area of the County of Midlothian by [S.S.I. 2000/338](#), [art. 2](#)

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