

SCOTTISH REGISTER OF TARTANS ACT 2008

EXPLANATORY NOTES

SUMMARY OF AND BACKGROUND TO THE ACT

Section 7: Determination of Application

21. This section sets out the process by which the Keeper will consider applications to register a tartan and gives the criteria against which an application is to be considered by the Keeper. It also allows the Keeper to seek additional information which he deems necessary to enable him to consider the application. Subsection (2) sets out the criteria the Keeper will apply when considering applications for registration. An application cannot be accepted in the following situations: where a requirement of the application process set out in section 6 is not met; when the design does not meet the definition of tartan in the Act; where the tartan is not unique or is similar enough to be mistaken for a tartan already registered; when the applicant cannot show sufficient connection/interest/relationship with the name of the tartan in the application (for example the applicant has no connection with an organisation or body whose name is part of, or associated with, the name of the tartan); where the application gives rise to a question more appropriately resolved elsewhere such as a court – such a question might be who is the owner of a tartan. Provided the Keeper is satisfied none of these grounds for refusal has been met, subsection (3) requires the Keeper to accept the application. The Keeper is not required to check the veracity of the certification given under section 6. So long as the certificate is provided (and all the other criteria are met) the Keeper cannot refuse to register.
22. Subsection (4) requires the Keeper to notify the applicant of the outcome of the consideration of the application and to do so in writing. Subsection (5) requires the Keeper to provide an unsuccessful applicant with reasons for rejection and permits him to give advice on how to meet the criteria against which the Keeper considers applications for registration in relation to any subsequent application. This will enable the Keeper to give a view on any steps an applicant could take to satisfy the criteria.
23. Subsection (6) allows the Keeper, in reaching a view on an application for registration, to consult sources of expertise as necessary. This allows the Keeper in coming to a decision on an application to consult and engage with, for example, the tartan industry, the Lord Lyon and other sources of tartan and genealogical expertise as necessary.