

# LAND REGISTRATION ETC. (SCOTLAND) ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: the Land Register**

23. **Part 1** of the Act provides for the continuation of the Land Register and sets out what the component parts of the register are. It also makes provision for how the Land Register is to deal with common areas, both within tenements and in other places where property is shared (such as gardens and driveways).

#### **The Land Register of Scotland**

##### *Section 1: The Land Register of Scotland*

24. The section sets out the underlying legal basis for the Land Register in Scotland. Subsection (1) makes it plain that the register is a public register of rights in land. The equivalent 1979 Act provided for the Land Register to be a register of interests in land. This is not a substantive change, merely a change of emphasis.
25. Subsection (4) gives the Keeper of the Registers authority and flexibility as to the form of the Land Register. In particular, it allows the Land Register to be in electronic form.
26. Subsection (5) makes it clear that it is the Keeper's responsibility to ensure that the Land Register is sufficiently protected, due to the significant implications that would result from problems with it.

#### **Structure and contents of the register**

##### *Section 2: The parts of the register*

27. This section provides for the constituent parts of the Land Register. The details relating to each part are provided for in the following sections. It is noteworthy that the formal parts of the Land Register are expanded to include the cadastral map, the archive record and the application record. These parts of the Land Register previously existed on an administrative basis only. Section 6 of the Land Registration (Scotland) Act 1979 made provision with regards to title sheets, but did not mention the title sheet record.

#### **Title sheets and the title sheet record**

##### *Section 3: Title sheets and the title sheet record*

28. Subsections (1) and (6) together establish a key principle that each registered plot of land has a title sheet and there is only one title sheet for each plot. This is, however, subject to exceptions in subsections (2) and (7).

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2012 (asp 5) which received Royal Assent on 10 July 2012*

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

***Section 4: Title and lease title numbers***

32. This section is self-explanatory.

***Section 5: Structure of title sheets***

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

***Section 6: The property section of the title sheet***

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

***Section 7: The proprietorship section of the title sheet***

40. This section of the title sheet sets out who owns the property described in the property section and their respective shares (for common ownership). This section is commonly known as the “B section”.

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

***Section 8: The securities section of the title sheet***

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

***Section 9: The burdens section of the title sheet***

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

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

48. Subsection (2) sets out the additional matters that the Keeper must enter on a title sheet and includes a general duty to include such information as the Keeper considers appropriate. This might be used, for example, to enter statements on a title sheet about the existence of a real burden subsisting by virtue of any of sections 52 to 56 of the Title Conditions (Scotland) Act 2003 (various implied rights of enforcement) or section 60 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (preserved right of Crown to maritime burdens).
49. Subsections (4) and (5) make it clear that the information entered cannot contain any rights or obligations not authorised by law, and if rights or obligations are so entered, their entry has no effect. Therefore, should a right and obligation appear on a title sheet when it is not authorised by law, or the entry relates to a right or obligation, which is merely a personal right, their entry is of no effect and does not constitute notification of the right to any party searching the Land Register.

50. Subsection (3) allows the Keeper to incorporate into the title sheet additional documents by reference. This includes documents in the archive record, such as supplementary plans or deeds registered in other registers the Keeper manages and controls (such as deeds in the General Registers of Sasines, the Register of Inhibitions or the Books of Council and Session).
51. Subsections (2)(b) and (6) mean that while particulars of special destinations can be entered on title sheets generally, they cannot be entered on shared plot title sheets or shared lease title sheets.

## **The cadastral map**

### ***Section 11: The cadastral map***

52. This section provides detail on the content of the cadastral map. The cadastral map is a map of registered land rights in Scotland, showing, in particular, cadastral units (see section 12).
53. Subsection (1) of section 11 provides that the entry on the cadastral map for a cadastral unit is a data set that will show the boundaries of the cadastral unit. The description of the property as set out in the property section of the title sheet will make reference to the cadastral unit number.
54. Subsection (3) permits, but does not compel, three-dimensional mapping.
55. Subsections (5) and (6) make provision for the base map, on which the cadastral map is to be based. The default base map is to be the Ordnance Map maintained by the Ordnance Survey. The Keeper may use a different system of mapping as the base map if the Keeper considers that appropriate. The base map may be a combination of the Ordnance Map and such a different system.
56. Subsection (7) allows the Keeper to make consequential changes to the Land Register when the base map is updated. In practice, this means that where the Ordnance Map is improved, the boundaries of cadastral units can be adjusted as long as the adjustment falls within the Ordnance Survey mapping specifications for the base map.
57. Subsection (9) is a marker to note that there is an exception to the general rules on mapping in the cadastral map in section 16 for tenements and other flatted buildings.

### ***Section 12: Cadastral units***

58. This section provides that each numbered cadastral unit represents a registered plot of land.
59. Subsection (3) provides for an exception that a pertinent can be included in the same cadastral unit as the land to which it pertains.
60. The consequence of subsection (2) is that entries on the cadastral map, other than entries for separate tenements, and in transitional cases, cannot overlap.

### ***Section 13: The cadastral map: further provision***

61. **Section 13(1)** recognises that it is possible for plots of land to lie outwith the base map. For example, at present, the Ordnance Map does not extend to the seabed. This section allows the Keeper to map titles, such as seabed titles (which may be long leases for renewable energy projects), as the Keeper thinks fit. In practice, this section will allow seabed titles to be represented on the cadastral map by, for example, a dataset of co-ordinates.
62. Subsections (2) to (4) contain important powers for the Keeper to manage the cadastral map by dividing, removing and combining cadastral units. On doing so, the Keeper

would be required by the combination of sections 3 and 12 to rationalise the title sheets that correspond to the cadastral units, and subject to transitional arrangements.

## **The archive record**

### ***Section 14: The archive record***

63. This section provides for the archive record to be the repository of documents supporting the accuracy of the Land Register.
64. Under subsection (3), the archive record need not include copies of legislation (which is otherwise publicly available), documents contained in other registers that are controlled by the Keeper of the Registers of Scotland, or documents stored by the Keeper of the Records of Scotland.
65. Subsection (4) ensures that although the archive record becomes a constituent part of the register, parties relying on the title sheet record are not considered to have constructive knowledge of its content. This preserves the so-called "curtain principle" of not having to look behind the face of the register.

## **The application record**

### ***Section 15: The application record***

66. This section makes provision about the application record. The application record is essentially the Keeper's "in tray" of pending applications the Keeper is to consider. Advance notices (see Part 4) for registered plots of land will be entered in the application record.

## **Tenements etc.**

### ***Section 16: Tenements and other flatted buildings***

67. Titles to tenement flats are particularly difficult to map. Typically, tenement properties are conveyed by reference to a verbal description of the individual flat. They are seldom mapped. Subsection (1) allows the Keeper to continue to use the approach of depicting a tenement as a site of single extent on the cadastral map. The power is also extended to single-storey buildings with internal divisions, where the same issue applies. In practice, this means the cadastral unit for each plot of land in the tenement is the whole tenement (although each flat will have its own title sheet).
68. Subsection (2)(b) makes provision for how pertinents of the flats in tenements are to be treated.
69. Subsection (3) creates a rule that disapplies subsections (1) and (2) in respect of land pertaining to the tenement or flatted building that is further than 25 metres from the "flatted building" as defined in subsection (4). Where a shared pertinent is not further than 25 metres from the tenement building, the Keeper is allowed to include the pertinent in the site of single extent. Where a shared pertinent extends further than 25 metres from the tenement building, a shared plot title sheet will require to be created for the pertinent (see section 17). Where a pertinent is an exclusive pertinent to one flat in the tenement, that pertinent will be able to be included as a discontinuous site on the cadastral map with the same cadastral unit as the tenement building whether or not it extends beyond 25 metres from the building.

## **Shared plots**

### ***Section 17: Shared plots***

70. This section and the following three sections provide for a scheme to define common areas and give them standalone title sheets. These common areas, such as driveways, shared gardens, amenity areas and bin stores often currently appear in more than one title sheet, meaning that when viewing the cadastral map it is unclear who the owners of the area of land are.
71. Subsection (2) gives a power to the Keeper to make up a shared plot title sheet. There is no duty to do so.
72. Subsection (3) provides for the relationship between a “shared plot” and a “sharing plot”.
73. Subsection (5) makes special provision that, unless the deed provides otherwise, a deed affecting a sharing plot will similarly affect the relevant share in the shared plot. Subsection (4) makes this reference apply to all other documents (the most important of which is missives).

### ***Section 18: Shared plot and sharing plot title sheets***

74. Subsections (1) to (3) set out what is to be included and what is not to be included in a shared plot title sheet and a sharing plot title sheet. Subsection (1) in particular shows the biggest difference between a shared and sharing plot title sheet and an ordinary title sheet. It provides that the sharing plot title sheet will include the title number of the shared plot title sheet in the property section and that the title number of the sharing plot title sheet will appear in the proprietorship section of the shared plot title sheet. This means that where a sharing plot is sold, no change is required to the shared plot title sheet. This is because the sale of the sharing plot will result in a change to the property section of that title sheet but its title number will remain the same.

### ***Section 19: Conversion of shared plot title sheet to ordinary title sheet***

75. This section provides that a shared plot title sheet can be converted into an ordinary title sheet. This might happen if one of the sharing plot owners buys up the other owners’ interests in the shared plot.

### ***Section 20: Shared plot title sheets in relation to registered leases***

76. This section introduces schedule 1 to the Act, which makes equivalent provision for shared lease area title sheets. These title sheets correspond to shared plot title sheets but relate to shared lease interests rather than shared ownership interests.