

LAND REGISTRATION ETC. (SCOTLAND) ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Registration

77. **Part 2** of the Act provides for the process of registration in the Land Register.
78. This Part also makes provision for the three elements that will ensure the eventual realisation of a completed Land Register. These are the additional “triggers” for first registration of titles, voluntary registration and Keeper-induced registration. A “first registration” is the processing of an application relating to land that is not already on the Land Register, the completion of which results in a land registered title.
79. There is no explicit reference in the Act to the additional triggers for first registration. Instead, the effect comes from the general effect of the Act and the closure of the General Register of Sasines to the recording of various deeds as provided for in section 48. The first closure step provided for in section 48 is the closure of the General Register of Sasines to transfer deeds. The consequence is that if someone wishes to transact with property registered in the General Register of Sasines and therefore to transfer ownership rights, the only way this can be done is by registering the disposition transferring ownership in the Land Register.

Applications for registration

Section 21: Application for registration of deed

80. This section provides the basic assumptions about applications for registration in the Land Register: that a person can apply for registration of a registrable deed; and that if the application complies with the applicable conditions, the Keeper must accept the application. Provision is also made that if the application does not comply with the applicable conditions, the Keeper has to reject the application.
81. Subsection (4) provides that where an owner of land objects under section 45(5) to their land being subject to a prescriptive claim (see sections 43 to 45 for prescriptive claimants, who do not have a registered ownership title to the property they are seeking to register), and who does so within 60 days of notice of the prescriptive claim, the application by the prescriptive claimant falls to be rejected.

Section 22: General application conditions

82. This section sets out the general conditions with which all applications have to comply. Section 4 of the Land Registration (Scotland) Act 1979 made only minimal provision for applications for registration.
83. Subsection (1)(a) is a requirement that the application allows the Keeper to comply with the Keeper’s duties under Part 1. The main duties in question are:

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- the duties under sections 6 to 9 to enter what those sections provide for into the relevant sections of a title sheet; and
 - the duty in section 14(1) to include copies of relevant documents in the archive record in relation to the application.
84. Subsections (1)(b) and (2) prevent any application that relates to a so-called “souvenir plot” (that is, a plot that is very small and of no practical use to anyone) from being accepted.
85. The effect of subsection (1)(c) is that where subordinate legislation (made under section 9G of the Requirements of Writing (Scotland) Act 1995 as inserted by section 97) sets out requirements as to the type of document and level of authentication required for registration of an electronic document, an application for registration has to comply with the terms of the relevant subordinate legislation to be accepted. Traditional documents are required to comply with the rules already in section 6 of the 1995 Act.
86. Subsection (1)(d) provides that an application must comply with requirements as to form that are specified in the Land Register rules (see section 115).

Section 23: Conditions of registration: transfer of unregistered plot

87. This section provides the special conditions for what is known as an application for “first registration”. A first registration is where an unregistered property is taken into the Land Register for the first time. By virtue of the closure of the General Register of Sasines to the recording of various deeds under section 48, first registration will be induced not only when there is a transfer for value (which is the existing law, replaced by the Act), but for all transfers.
88. Subsection (1) provides for the additional conditions that apply to a first registration. Subsection (1)(c) requires the application to include information to enable the Keeper to make an accurate entry on the cadastral map in relation to the cadastral unit created as a consequence of an accepted application.
89. Subsection (2) provides an exception to these conditions for flats in tenements where the Keeper chooses, under section 16, to represent the tenement as a site of single extent.
90. Subsection (3) is an exception to the exception in subsection (2) and requires any exclusive pertinent of the plot of land, such as a coal cellar or parking space pertaining to one of the flats, to be sufficiently described (because the pertinent would still need to be mapped by the Keeper).
91. Subsection (4) clarifies that the applicant is not required to provide a plan or description of certain servitudes affecting the plot such as pipeline servitudes (subsection (4)(a)) or servitudes created other than by registration, e.g. by prescription (subsection 4(b)).

Sections 24 and 25: Conditions of registration: certain deeds relating to unregistered plots

92. These sections make provision for the circumstances in which, as a consequence of an application for registration of a subordinate real right (such as an assignation of an unregistered lease), a first registration of the underlying land must take place. There will be additional applications of these types by virtue of the closure of the General Register of Sasines under section 48.
93. **Section 24** sets out the type of applications in relation to which the conditions in section 25 apply on first registration of the underlying unregistered land. They are:
- on an application for registration of a lease over the land;
 - on an application for registration of an assignation of a lease over the land;

- on an application for registration of a sublease over the land;
 - on an application for registration of a deed registerable because the Register of Sasines has been closed to new deeds of that type (see sections 48(3) and (4) over the land;
 - on an application for registration of a notice of title to a subordinate real right in relation to the land; and
 - on an application for registration of a standard security over an unregistered, subordinate real right in relation to the land.
94. [Section 25](#) sets out the additional conditions for the registration of the deeds referred to in section 24.

Section 26: Conditions of registration: deeds relating to registered plots

95. This section provides special provisions for applications relating to plots of land already registered in the Land Register. The main types of such application are a transfer of the whole of a plot (commonly known as a “dealing with whole”), a transfer of part of a plot (known as a “transfer of part”) and the registration of a standard security. Transfers of part are most commonly associated with new-build developments. This section applies to all deeds that relate to registered plots of land.
96. Subsection (1)(d) provides a special rule for transfers of part, that the part of the plot which is being transferred has to be sufficiently described to allow the Keeper accurately to map the boundaries of the new plot in the cadastral map. Subsection (3) provides that this mapping rule does not apply to tenements mapped as a site of single extent under section 16. Subsection (4) provides, however, that exclusive pertinents of plots do still need to be mapped. This is the same arrangement as in section 23 for first registration.

Registration without deed

Section 27: Application for voluntary registration

97. This section provides the scheme for applications for voluntary registration of plots of land or parts of plots to be registered. This is a form of first registration. However, since the applicant will already own the land, there will be no transfer of rights as a result of an accepted application.
98. Subsection (3)(b) gives the Keeper a power to decline to accept an application on the ground of expediency. This broadly replicates the provision in section 2(1)(b) of the Land Registration (Scotland) Act 1979. Subsection (6) allows Scottish Ministers to remove that power by order.

Section 28: Conditions of registration: voluntary registration

99. This section provides the special provisions for voluntary registration applications. These are similar to the conditions in section 25.

Section 29: Keeper-induced registration

100. This section gives the Keeper the ability to register land without application and without the consent of the owner of that land. Registration under this section would not affect the property title of the owner of the property but the Keeper can grant warranty in relation to the registration under section 74.

Completion of registration

Section 30: Completion of registration of plot

101. This section draws together the duties of the Keeper in relation to registration on acceptance of an application for first registration, voluntary registration or in relation to a Keeper-induced registration. Subsection (2) lists the practical duties the Keeper must perform to complete registration of a plot of land in the Land Register for the first time.

Section 31: Completion of registration of deed

102. This section provides the duties of the Keeper on acceptance of an application for registration of a deed by virtue of section 26. These provisions are not applicable to cases in which the plot of land has to be registered too. The most common instances of registrations under this section will be transfers of the whole of a plot, a transfer of part of a plot and registrations of a standard security.

Section 32: References to certain entries in Register of Inhibitions

103. This section makes provision for what the Keeper must do when an application to register a deed has been accepted but the validity of the deed may be affected by an entry in the Register of Inhibitions. In these circumstances, after the Keeper has accepted the application, a reference to the entry in the Register of Inhibitions must be entered in the title sheet. Subsection (3) provides two exceptions: (a) for notices of land attachments; and (b) for notices of actions of reduction (used to enforce inhibitions). This is because other enactments already provide for these notices to enter the Land Register by registration.

General provision about applications

Section 33: Recording in application record

104. Subsection (1) recognises that the Land Register application record closes at the end of each business day and that where applications for registration are made after this, the effective date of application will be the next day that the application record opens.

Section 34: Withdrawal and amendments etc. of application

105. This section provides for the so-called “one-shot principle”: that an application cannot be supplemented or substituted after the date of application unless the Keeper consents. Detailed provision can be made in the Land Register rules for that consent.

Section 35: Period within which decision must be made

106. This section allows Scottish Ministers to set turn-around times for the Keeper to deal with applications in the Land Register rules.

Date of application and registration etc.

Section 36: Date of application

107. This section provides that the formal date of application is always the date of the entry in the application record in respect of the application (whether or not the application was made earlier). This section ties in with section 33.

Section 37: Date and time of registration

108. This section provides that the formal date of registration is always backdated to the end of the date of application under section 36. The Scottish Ministers can make different provision by order.

Section 38: Power to amend section 6 of the Land Registers (Scotland) Act 1868

109. This section is self-explanatory.

Applications in relation to the same land

Section 39: Order in which applications are to be dealt with

110. This section makes detailed provision for the scenario in which competing applications are received by the Keeper. Subsection (2) clarifies that the order of receipt is to be taken to be the order details of the applications are entered in the application record. The provisions in sections 58 (period of effect of advance notice), section 59 (effect of advance notice: registered deeds) and section 60 (effect of advance notice: recorded deeds) are also relevant to this section.

Notification

Section 40: Notification of acceptance, rejection or withdrawal of application

111. Subsection (1) requires the Keeper, on acceptance or rejection of an application, to notify at least the applicant and any grantor of a deed to be registered.
112. Subsection (2) requires the Keeper, on an application for registration being withdrawn, to notify certain parties.
113. Subsection (3) provides that the duty on the Keeper in subsections (1) and (2) does not need to be carried out when it is not reasonably practicable to do so.

Section 41: Notification to proprietor

114. This section provides for notification to the proprietor in two cases. First, where there is an application for a first registration of a plot of land under section 21 as a result of the conditions under section 25 being met. An example is an application for registration of an assignation of an unregistered lease over unregistered land. The second case is where the Keeper has performed a Keeper-induced registration under section 29. In both cases, the owner of the land may be unaware that the plot of land has been registered in the Land Register.
115. Subsection (3) provides that the duty on the Keeper in subsections (1) and (2) does not need to be carried out when it is not reasonably practicable to do so.

Section 42: Notification to Scottish Ministers of certain applications

116. This section requires the Keeper to notify the Scottish Ministers when an application for registration is rejected on the grounds that it relates to a transfer that is prohibited by the Land Reform (Scotland) Act 2003 in relation to community interests in land.

Prescriptive claimants etc.

Overview of [sections 43 to 45](#): prescriptive claimants

117. [Sections 43 to 45](#) provide for the process whereby a person can apply for title to land to be constituted by prescription. The process for this is for an application to be made for registration of what is known as an *a non domino* disposition in relation to the area of land. The sections provide for the process by which a “prescriptive claimant” can apply to the Keeper to obtain a provisional title in the Land Register. The 10-year prescriptive period provided for by section 1(1) of the Prescription and Limitation (Scotland) Act 1973 can begin to run. If the 10-year period elapses without interruption (for example, such interruption could be by virtue of a challenge from the true owner of the land), the Keeper is to remove the provisional marking from the relevant entry in the title sheet.

Section 43: Prescriptive claimants

118. Subsection (1) provides that for the purposes of becoming a prescriptive claimant, the disposition granted in favour of the prescriptive claimant can be treated as valid so that the conditions of registration in sections 23 and 26 can be met.
119. Subsection (2) clarifies that this section is applicable to a disposition that is not granted by the person with the title to the subjects being granted.
120. Subsection (3) provides the first limb of the requirements for a person to become a prescriptive claimant. The applicant must satisfy the Keeper that the land that is sought to be acquired has been possessed by the disponent or the prescriptive claimant for one year immediately preceding the date of application. The prescriptive claimant will require to submit relevant evidence to the Keeper to satisfy this requirement. Subsection (8) allows Scottish Ministers to substitute a different time period for that provided for in subsection (3).
121. Subsection (4) provides the second limb of the requirements. To make a valid application, the applicant must satisfy the Keeper that they have taken reasonable steps to trace the true owner of the land, or any party able to complete title as true owner, and that they have been notified. Where no-one appears to own the land, sub-paragraph (c) requires the applicant to notify the Crown, as it is the ultimate heir to land in Scotland. In addition, abandoned property and the assets of a dissolved juristic person may also fall to the Crown as a matter of law. Subsection (7) contains a power to make further provision in Land Register rules regarding notification to various parties. This will allow the Land Register rules to make further provision with regards to the detail of the notification, how it is to be done and the information it should contain.
122. Subsection (5) is relevant to a title that has been provisionally registered in favour of a prescriptive claimant. It clarifies that subsequent deeds granted by a prescriptive claimant (such as a standard security) or against a prescriptive claimant (such as a charging order) are to be treated as valid despite the fact the prescriptive claimant's title remains provisional. The entries relating to any such deeds are also to be marked provisional in terms of section 44(1).
123. Subsection (6) sets out that in subsection (5) a prescriptive claimant is (i) a person whose application has been accepted under section 42(1), (ii) a person whose title has been marked as provisional under section 81(3)(a)(i) as a consequence of the Keeper becoming aware of a manifest inaccuracy which cannot be rectified due to the possibility prescription is running to cure it and (iii) any person in right of person (i) or (ii).

Section 44: Provisional entries on title sheet

124. This section provides that while a person is a prescriptive claimant, entries relating to the rights they would acquire were the prescriptive period to run successfully are to be marked as provisional. Entries relating to deeds granted by or against a prescriptive claimant are to be similarly marked. This section deals with first registrations and deeds affecting registered plots.
125. Subsection (2) provides that when the requirements in section 1 of the Prescription and Limitation (Scotland) Act 1973 have been met, the person's title is no longer provisional as they have become the owner in law of the land in question. Accordingly, the Keeper is to remove the provisional marking. This section should be read with the amendments made to the 1973 Act contained in paragraph 18 of schedule 5, in particular sub-paragraph (4).
126. Subsection (3) ensures that provisional markings on title sheets confer no real rights.
127. Where a prescriptive claimant's name is entered on the proprietorship section of a title sheet and the Keeper knows who the underlying owner of the land is, the Keeper can, by

virtue of section 10(2)(e), enter the underlying owner's name as well as the prescriptive claimant's.

Section 45: Notification of prescriptive applications

128. This section provides for further notification to the underlying true owner of property in advance of the acceptance of an application to become a prescriptive claimant. This extends the procedure in section 14 of the Land Registration (Scotland) Act 1979 that provided for the Keeper to notify the Crown Estate Commissioners of applications of foreshore subjects. Subsection (1) requires the underlying owner (who may be the Crown) to be notified by the Keeper. Such notification only requires to be done in the instance when there is not already a prescriptive claim to the title in question.
129. Subsection (2) provides that the duty on the Keeper in subsection (1) does not need to be carried out when it is not reasonably practicable to do so.
130. Subsections (4) and (5) ensure the underlying owner is given 60 days to veto an application for a person to become a prescriptive claimant over their land.

Further provision

Section 46: Applications relating to compulsory acquisition

131. This section makes provision for conveyances as provided for by enactment, notarial instruments and general vesting declarations to be treated as dispositions for the purposes of sections 21, 23, 30 and 48.

Section 47: Effect of death or dissolution

132. Subsection (1) provides that an application falls to be rejected if the applicant dies (or if a legal person such as a company is dissolved) before the application date under section 36, but can be accepted if the applicant dies or is dissolved while the Keeper's decision as to whether to accept or reject the application is pending.
133. Subsection (2) clarifies that if the granter of a deed dies or is dissolved after delivering the deed to the grantee, an application to register such a deed will not be incompetent for this reason.

Section 48: Closure of Register of Sasines etc.

134. This section provides for the phased closure of the General Register of Sasines.
135. Subsection (1)(a) provides that the recording of a disposition in the General Register of Sasines will cease to be effective. In practice, this will mean that in order for ownership to transfer, the disposition will require to be registered in the Land Register. Subsection (1)(a) is subject to the special case of title conditions. It may be necessary to record a disposition in the General Register of Sasines to meet the requirement of "dual registration" as provided for in section 4 of the Title Conditions (Scotland) Act 2003 (the 2003 Act) in respect of real burdens or in section 75 of the 2003 Act in respect of servitudes. This special case is set out in subsection (6). Subsection (1)(d) provides that once a plot of land is registered in the Land Register, nothing in relation to that land can be recorded in the General Register of Sasines.
136. Subsections 1(b) and (c) provide that leases, ("lease" is defined as including sub-lease in section 113(1)) and assignments of leases cannot be recorded in the General Register of Sasines. This will induce first registration in the Land Register of the underlying plot of land.
137. Subsection (2) provides a power for the Scottish Ministers by order to close the General Register of Sasines to standard securities. This would mean a property would need to

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be registered in the Land Register before a new standard security could be registered, allowing the creditor to obtain a real right.

138. Subsections (3) and (4) provide a similar power to close the General Register of Sasines completely and a corresponding power to register any deeds that could be recorded in that register in the Land Register instead.
139. Subsection (9) allows an order closing the General Register of Sasines under subsections (2) or (3) to apply on an area-by-area basis.
140. Subsection (10) provides that, before an order is made under subsection (2) or (3), the Scottish Ministers must consult the Keeper and any other persons that appear to have an interest in the closure of the Register of Sasines to the recording of deeds.