

LAND REGISTRATION ETC. (SCOTLAND) ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Competence and Effect of Registration

141. **Part 3** of the Act provides for which documents can be registered in the Land Register and what the effect of such registration will be.

Registrable deeds

Section 49: Registrable deeds

142. Subsection (1) provides for what documents can be registered in the Land Register. These are documents which any Act provides can be registered. The most common types of registrable documents are:

- dispositions (see section 50);
- standard securities (under section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970);
- long leases (under section 1 and 20A of the Registration of Leases (Scotland) Act 1857 – section 20A as inserted by section 52(2));
- notices of title (under section 4A of the Conveyancing (Scotland) Act 1924 (as inserted by section 53(3));
- decree of reduction (under section 46A(1) of the Conveyancing (Scotland) Act 1924 as inserted by section 54);
- an arbitral award which orders the reduction of a deed (under section 46A of the Conveyancing (Scotland) Act 1924 as inserted by section 54);
- an order for rectification of a document (under section 8A of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 as inserted by section 55(3));
- a standard security ranking agreement (under section 13(4) of the Conveyancing and Feudal Reform (Scotland) Act 1970 as inserted by paragraph 17(7)(c) of schedule 5);
- a deed creating a proper liferent (see section 51); and
- deeds registrable in the Land Register under section 48(7) following the closure of the General Register of Sasines under section 48(6).

Specific provisions on competence and effect of registration

Section 50: Transfer by disposition

143. Subsection (2) continues the important principle that a real right in ownership can only transfer when a valid disposition is registered.
144. Subsection (4)(a) makes subsections (1) to (3) subject to provisions in the Act on prescriptive claimants and persons acquiring in good faith from a person with invalid title. Subsection (4)(b) makes subsections (1) to (3) subject to any other enactment or rule of law under which ownership may pass. The most significant of these is transfer of ownership by operation of a survivorship destination contained in a disposition.
145. Subsection (5) makes it clear that this section covers udal land (which exists in Orkney and Shetland).

Section 51: Proper liferents

146. This section continues the principle that proper liferents (which allow a person to possess a property until their death) created in a deed, must be registered in either the Land Register or the General Register of Sasines to have real effect as a matter of property law.

Section 52: Registration of, and of transactions and events affecting, leases

147. This section inserts two sections into the Registration of Leases (Scotland) Act 1857. Inserted section 20A allows deeds affecting existing long leases to be registered in the Land Register (new long leases are registrable under section 1 of that Act). Inserted section 20B provides that the registered deed has real effect. Schedule 2 makes further related amendments.

Section 53: Completion of title

148. This section amends the Conveyancing (Scotland) Act 1924 to allow people to use a notice of title to complete an uncompleted title. Under current law, the use of a notice of title is only permitted in the General Register of Sasines.
149. Subsections (2) and (3) provide that an unregistered proprietor of an unregistered property has a choice of methods of completing title. That person is either to record a notice of title in the General Register of Sasines or register a notice of title in the Land Register. The exception to this rule is that where the last recorded title is not in the General Register of Sasines (for example if the property is in a Burgh Register of Sasines or is a pre-1617 title), the effect of subsection (2)(a) is that the option of recording a notice of title in the General Register of Sasines does not apply and the notice must be registered in the Land Register.
150. Subsection (4) is a power to prescribe the forms in relation to completion of title by order. Subsection (5) provides, for Land Register cases, a simplified style of notice (the statutory styles for use in the General Register of Sasines are not altered).

Section 54: Registration of decree of reduction

151. This section inserts a new section 46A into the Conveyancing (Scotland) Act 1924, the effect of which will be that where a voidable deed is reduced, the decree does not immediately change real rights that have been entered in the Land Register. Instead, section 46A(1)(b) provides that the decree has effect on those rights when it is registered in the Land Register. The real rights of the parties concerned thus only change as of the date of the registration of the decree.

152. Subsection (3) ensures that an arbitral award ordering reduction of a deed and made under the Arbitration (Scotland) Act 2010 can where appropriate have equivalent effect as is provided for a decree of reduction under subsection (1).

Section 55: Registration of order for rectification of document etc.

153. Judicial rectification of a document under section 8 of the Law Reform (Miscellaneous Provisions) Scotland Act 1985 operates retrospectively where a court is satisfied that a document failed to give effect to the common intention of the parties. Section 3 of the 1985 Act allows the court to rectify any subsequent document that is defectively expressed by virtue of the defect in the original document. Subsection (2)(a) inserts a new subsection (3A) into section 8 to provide that, where any such subsequent document is registered in the Land Register in favour of a third party who is in good faith, judicial rectification of that document can only happen where the third party consents to the rectification.
154. Subsection (3) inserts a new section 8A which provides that an order for rectification under section 8 of a document registered in the Land Register will have no real effect until the order itself is registered. When it is so registered, it has effect at that point, rather than applying retrospectively to, for example, the date of the making of the order.