

LAND REGISTRATION ETC. (SCOTLAND) ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Advance Notices

155. The first sections in Part 4 provide for a system of advance notices that protects the grantee of a deed during the time between taking delivery of the deed (in exchange for the money) and the registration of that deed. This period is known as the "gap risk" as the grantee is vulnerable in this period to the registration of competing deeds or sequestration of the granter of the deed. The entry of an advance notice referring to a registrable deed ensures that during the next 35 days no disposition or competing advance notice can beat that deed in any race to the register.
156. The following examples of the way in which advance notices are intended to operate in the case of registered titles draw on the examples in schedule 3 to the draft Bill in volume 2 of the final SLC Report. They are provided for illustrative purposes and are no substitute for full consideration of the Act:

Example 1:

Circumstances:

- X, who is the owner of Blackmains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a disposition of the property to Y but also a disposition of it to Z.
- On 8th May, Z's disposition is registered in the Land Register.
- On 15th May, Y applies for registration in the Land Register.

Consequences:

- The Keeper accepts Y's application and on registering Y's disposition replaces Z's name by Y's in the Land Register. Y becomes registered proprietor of the property with effect from 15th May.

Example 2:

Circumstances:

- The same as in example 1 except that Y does not apply for registration in the Land Register until after the protected period has elapsed.

Consequence:

- Y's application is rejected.

Example 3:

Circumstances:

- X, who is the owner of Scarletmains, grants on 1st May an advance notice in favour of Y in respect of a prospective disposition to Y of that property and on 2nd May an advance notice in favour of Z in respect of a prospective disposition to Z of that property.
- Z's advance notice is entered in the application record of the Land Register on 8th May.
- Y's advance notice is so entered on 9th May.
- X delivers a disposition of the property to Y but also a disposition of it to Z.
- On 15th May, Y's disposition is registered in the Land Register.
- On 16th May, Z applies for registration in the Land Register.

Consequences:

- The Keeper accepts Z's application and on registering Z's disposition replaces Y's name by Z's in the Land Register. Z becomes registered proprietor of the property with effect from 16th May.

Example 4:

Circumstances:

- X, who is the owner of Whitemains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a disposition of the property to Y but also a deed of servitude over it to Z.
- On 8th May, the deed of servitude is registered in the Land Register.
- On 15th May, the disposition is registered in the Land Register.

Consequences:

- The Keeper removes the servitude from the Land Register.

Example 5:

Circumstances:

- X, who is the owner of Greymains, grants an advance notice in favour of Y in respect of a prospective standard security over the property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a standard security over the property to Y but also a standard security over it to Z.
- On 8th May, Z's standard security is registered in the Land Register.
- On 15th May, Y's standard security is registered in the Land Register.

Consequence:

- From 15th May, Y's standard security ranks ahead of Z's standard security.

Example 6:

These notes relate to the Land Registration etc. (Scotland) Act 2012 (asp 5) which received Royal Assent on 10 July 2012

Circumstances:

- X, who is the owner of Purplemains, grants an advance notice in favour of Y in respect of a prospective standard security over the property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a standard security over the property to Y but also a disposition of it to Z.
- On 8th May, Z's disposition is registered in the Land Register.
- On 15th May, Y applies for registration of the standard security in the Land Register.

Consequences:

- The Keeper accepts Y's application and Z's land is encumbered with the standard security as from 15th May.

Example 7:

Circumstances:

- X, who is the owner of Greenmains, grants an advance notice in favour of Y in respect of a prospective servitude over the property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a deed of servitude over the property to Y but also a disposition of it to Z.
- On 8th May, the disposition is registered in the Land Register.
- On 15th May, Y applies for registration of the deed of servitude in the Land Register.

Consequences:

- The Keeper accepts Y's application and Z's land is encumbered with the servitude as from 15th May.

Example 8:

Circumstances:

- X, who holds a registered lease over Yellowmains, grants an advance notice in favour of Y in respect of a prospective assignation of the lease.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers an assignation of the lease to Y but also a standard security over the lease to Z.
- On 8th May, the standard security is registered in the Land Register.
- On 15th May, the assignation is registered in the Land Register.

Consequences:

- The Keeper removes the standard security from the Land Register.

Example 9:

Circumstances:

These notes relate to the Land Registration etc. (Scotland) Act 2012 (asp 5) which received Royal Assent on 10 July 2012

- X, who is the owner of Bluemains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a disposition of the property to Y.
- On 8th May, X grants a short lease over the property to Z who enters immediately into possession.
- On 15th May, the disposition is registered in the Land Register.

Consequence:

- The lease is not, by virtue of the registration, avoided.

Example 10:

Circumstances:

- X, who is the owner of Redmains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- On 2nd May, X is inhibited.
- On 3rd May, missives of sale between X and Y are concluded. Thereafter X delivers a disposition of the property to Y and the disposition is registered in the Land Register.

Consequence:

- The disposition, if so registered while the protected period is running, is not affected by the inhibition.

Section 56: Advance notices

157. This section sets out the criteria for an advance notice. Paragraphs (a) to (c) of subsection (1) set out the requirements for advance notices generally. Paragraph (d) applies just to advance notices where the property is on the Land Register. Paragraph (e) applies for property that is not in the Land Register, most of which will be recorded in the General Register of Sasines. The difference in requirements relates to how the property must be identified.
158. Subsection (2) means mapping is not required for an advance notice relating to a flat in a tenement or in a flatted building when the building is mapped as a single cadastral unit. That is subject to similar exceptions for pertinents as for registration under Part 2 of the Act.

Section 57: Application for advance notice

159. This section sets out the application process for an advance notice. Subsection (2) provides that such an advance notice may be applied for by the person who may grant the protected deed or any person with their consent. In a house sale, this would allow the owner of the house to apply for an advance notice operating in favour of the prospective purchaser. The purchaser would be able, with the consent of the owner, to apply for an advance notice in favour of the lender who will be providing the mortgage for the purchase.

Section 58: Period of effect of advance notice

160. This section provides that the protected period of an advance notice will be 35 days. This period can be shortened if the advance notice is discharged under section 63.

Section 59: Effect of advance notice: registered deeds

161. This section sets out the effect of an advance notice on deeds registered in the Land Register. Subsections (2) and (3) give the principal effect. Where a deed, Y, is registered after another deed, Z, and deed Y is protected by an advance notice, registration of deed Y is to be completed as if deed Z did not exist. When deed Y has been duly registered, deed Z should then be “re-registered” for any effect it may have. In many circumstances Deed Z will be rejected as the person granting it is no longer entitled to do so. However if, for example, deeds Y and Z were both standard securities, deed Z could still be registered but would simply rank lower than deed Y. In the circumstances where deed Y is not, in fact, registered within the protected period, deed Z will be registered normally and have its full effect.
162. The section therefore prioritises deed Y over deed Z. The grantee of deed Z is not disadvantaged as the grantee will know of the existence and potential effect of the advance notice in favour of deed Y as it is on the Register.

Section 60: Effect of advance notice: recorded deeds

163. This section sets out the effect of an advance notice where there has been a deed recorded in the Register of Sasines ("deed Z") prior to a protected deed ("deed Y") being registered in the Land Register. Subsection (2) provides that when a decision is being made by the Keeper to register deed Y in the Land Register, that registration is to take effect as if deed Z had not been recorded. Subsection (3)(a) further clarifies that if deed Y has been registered, the registration has the same affect as if deed Z had not been recorded. Subsection (3)(b) provides that when the Keeper is making up the title sheet for the plot, if after the registration of deed Y deed Z has any effect on the plot, this must be shown on the title sheet.

Section 61: Effect of advance notice: further provision

164. This section sets out the secondary effect of an advance notice. In general, an entry in the Register of Inhibitions means a person cannot sell their property free of the inhibition. Where an entry is added to the Register of Inhibitions during the protected period of an advance notice, the grantee of the protected deed will be able to purchase the property free of any effect of the inhibition.

Section 62: Removal of advance notice etc.

165. This section instructs the Keeper to remove an advance notice from the application record and add it to the archive record where the protected period has ended. Subsection (2) allows Scottish Ministers to make rules relaxing this obligation in certain circumstances. This covers the situation where the advance notice has resulted in the Keeper mapping a new property but the notice has lapsed before the deed is registered. It means the Keeper need not delete the mapping work while there is the possibility it will still be required in the near future.

Section 63: Discharge of advance notice

166. This section provides for the possibility that an advance notice may be discharged by the proposed granter of the protected deed if the potential grantee consents. While advance notices do not freeze the Land Register, they may make a property effectively unmarketable to anyone other than the grantee of the deed referred to in the advance notice. The section allows (where, for example, the sale has fallen through) for the

*These notes relate to the Land Registration etc. (Scotland) Act
2012 (asp 5) which received Royal Assent on 10 July 2012*

parties to bring the advance notice to an end before the 35-day period has elapsed. Subsections (4)(b) and (5) extend the same rule to the Sasine Register.

Section 64: Application of part to specific deeds

167. This section allows Scottish Ministers to make provision modifying this Part in relation to particular types of deeds that may be protected by advance notices.