

# LAND REGISTRATION ETC. (SCOTLAND) ACT 2012

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## EXPLANATORY NOTES

### SCHEDULES

#### *Schedule 1: Registered leases tenanted in common*

264. As explained in relation to sections 17 to 20 on shared plots, this schedule makes equivalent provision to shared plots for shared lease areas. The shared lease area title sheets provided for correspond to shared plot title sheets but relate to shared lease interests rather than shared ownership interests.

#### *Schedule 2: Amendment of Registration of Leases (Scotland) Act 1857*

265. This schedule makes consequential changes to the changes made by section 52.

#### *Schedule 3: Amendment of Requirements of Writing (Scotland) Act 1995*

##### Overview of [schedule 3](#)

266. This schedule makes changes consequential on the changes in Part 10 of the Act to the Requirements of Writing (Scotland) Act 1995.
267. [Paragraphs 2 to 17](#) provide for a new Part 2 of the 1995 Act. The new Part 2 makes provision for the formal validity of traditional documents, which are those documents written on paper (as opposed to being electronic). Most of the paragraphs make consequential amendment on the change of label from “document” to “traditional document”. In particular, sub-paragraphs 11(ca) and (cb) and 19A apply the same rules for probativity for the recording of traditional documents in the Register of Sasines to registration in the Land Register, including an exclusion from these rules when the registration or recording of a document is required or expressly permitted by an enactment.
268. [Paragraph 13](#) repeals section 6A of the 1995 Act. That section was inserted into the 1995 Act by section 222 of the Bankruptcy and Diligence etc (Scotland) Act 2007 to provide, in the short term, a mechanism by which a creditor could proceed with summary diligence upon a personal bond contained with a standard security created in electronic form within the Keeper’s Automated Registration of Title to Land system, given that the Books of Council and Session were open only to traditional documents. Under new section 9G of the 1995 Act, all types of electronic document become directly registrable in the Books of Council and Session provided that they meet prescribed standards, and so the provision is no longer necessary.
269. [Paragraph 19](#) makes amendments to section 12 of the 1995 Act (the interpretation section). In paragraph (b), inserted subsection (4) provides explanation as to the meaning of certification in relation to electronic documents.

#### **Schedule 4: Transitional provisions**

270. This schedule deals with the transition from registration in the Land Register under the 1979 Act to registration under the Act. Reference in this note to the designated day is to the day that the new scheme comes into force.

#### **Paragraphs 1 to 6**

271. Paragraphs 1 to 6 contain provisions about the treatment of existing title sheets. They become part of the Title Sheet Record and as such, title sheets for plots of land, or lease title sheets. The Keeper is given the power to make existing title sheets conform to the new scheme but is generally not obliged to do so. The C section on new title sheets will be called the “securities section”. The Keeper will have the power to change the name of the C section (currently called the “charges” section) to the securities section. An existing title sheet for the tenant's interest in a lease will become a lease title sheet.

#### **Paragraphs 7 to 11**

Paragraphs 7 to 11 contain provisions about common areas that are at present included in the title sheet of each of the sharing properties. The new scheme requires that when such areas are created in future they are to have their own title sheet. Paragraphs 7 and 8 allow, but do not oblige, the Keeper to create a separate title sheet for common areas that already exist. Paragraph 9 deals with developments that are part-completed on the designated day. It allows the present practice of including common areas in the title sheets of the sharing properties to continue in respect of the remainder of the development.

#### **Paragraph 12**

272. This paragraph provides for the migration of existing documents into the archive record.

#### **Paragraphs 13 and 14**

273. Paragraph 13 makes clear that applications for registration that are pending at the designated day will be dealt with as applications under the 1979 Act.
274. Paragraph 14 provides that an application for rectification under section 9 of the 1979 Act, which has not been determined by the Keeper by the designated day, will fall. However, that does not affect the applicant's rights as the Keeper is under a positive duty to rectify inaccuracies.

#### **Paragraphs 15 and 16**

275. Paragraphs 15 and 16 make clear that any claims for indemnity, or for reimbursement of expenses under the 1979 Act that have already vested are not affected by the new scheme.

#### **Paragraphs 17 to 24**

276. Paragraphs 17 to 24 deal with what are known as bijural inaccuracies. For the concept of bijural inaccuracy, see Part 17 of the Scottish Law Commission Report (Scot Law Com No. 222). In the new scheme, there will be no bijural inaccuracies so provision requires to be made for inaccuracies of that kind that exist immediately prior to the designated day. They must either (i) cease to be an inaccuracy (in which case the rights of the parties are realigned to follow what the Land Register says they are), or (ii) be re-conceptualised as an actual inaccuracy.
277. The test adopted as to whether (i) or (ii) occurs is whether a particular inaccuracy could have been rectified under the rules in section 9 of the 1979 Act. If so, paragraphs 17 to 21 convert the bijural inaccuracy into an actual inaccuracy and make provision for compensation to be paid to a person losing a right if the register is then rectified save

where a right to indemnity would not have arisen under the 1979 Act. If, however, the bijural inaccuracy could not be rectified under section 9 of the 1979 Act, paragraphs 22 to 24 make provision for the inaccuracy to cease to be an inaccuracy (i.e. for the rights of the parties concerned to be realigned so as to conform to what the Land Register says they are). Provision is also made for the payment of compensation to a person suffering loss as a result of such realignment where a right to indemnity would have arisen under the 1979 Act if rectification under section 9 was not possible.

278. In both cases, the practical result is the same as it is under the 1979 Act. A title that was vulnerable to rectification remains vulnerable, while one that was invulnerable (usually due to the protection given to a proprietor in possession) becomes free from the possibility of rectification. As possession is important under the current law, and in order to minimise problems of evidence, paragraph 18 provides that the person registered as proprietor of the land is presumed to be in possession for the purposes of determining whether the Keeper had power to rectify.

### ***Paragraph 25***

279. **Paragraph 25** applies where the title to a flat in a tenement is already recorded in the General Register of Sasines or registered in the Land Register. In such cases, following present practice the Keeper will be able to continue to depict land further than 25 metres from the tenement building as part of the steading and, where such land is a common area, the Keeper will not be required to quantify the pro indiviso shares of the flats in such land in the proprietorship section of the title sheets of the individual flats.

### ***Paragraph 26***

280. **Paragraph 26** is self-explanatory.

## ***Schedule 5: Minor and consequential modifications***

### **Overview**

281. This schedule makes minor and consequential changes. Most of the changes are either consequential on the repeal of parts of the Land Registration (Scotland) Act 1979 and its replacement with the Act or consequential on the amendments to the Requirements of Writing (Scotland) Act 1995 and the extension of the means of documents being self-proving from requiring to be “subscribed” (which is a paper only process) to also being capable of being “authenticated” (that is, authenticated as valid electronic documents in accordance with regulations made under the 1995 Act).

### ***Paragraph 1 - Lands Clauses Consolidation (Scotland) Act 1845***

282. This amends the note about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form.

### ***Paragraph 2 - Commissioners Clauses Act 1847***

283. Subparagraph (2) amends the 1847 Act to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form. Subparagraph (3) replaces the specific reference to the Requirements of Writing (Scotland) Act 1995 with a more general reference to the Act.

### ***Paragraph 3 - Ordnance Board Transfer Act 1855***

284. This paragraph amends section 5(2) of the 1855 Act to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.

***Paragraph 4 - Transmission of Moveable Property (Scotland) Act 1862***

285. This amends the Schedules to the 1862 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

***Paragraph 5 - Land Registers (Scotland) Act 1868 (c.64)***

286. The effect of this amendment is to make clear that the provisions of the 1868 Act which are referred to do not apply to the Land Register.

***Paragraph 6 - Titles to Land Consolidation (Scotland) Act 1868***

287. Subparagraphs (2) and (3), which are about litigiosity, are disapplied in relation to the Land Register. The reason is that the situations they deal with will be dealt with by caveats.
288. Subparagraph (4) amends the form in Schedule B to the 1868 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

***Paragraph 7 - Conveyancing (Scotland) Act 1874***

289. Subparagraph (2) amends the note about mode of execution in Schedule M to the 1874 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

***Paragraph 8 - Trusts (Scotland) Act 1921***

290. Subparagraphs (2) and (3) amend the notes about mode of execution in the Schedules to the 1921 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

***Paragraph 9 - Conveyancing (Scotland) Act 1924***

291. Subparagraph (2) adds a reference to the Land Register of Scotland to section 2(5).
292. Subparagraph (3) is consequential on the repeal of schedule K by the Abolition of Feudal Tenure etc. (Scotland) Act 2000 schedule 13(1) paragraph 1.
293. Subparagraph (4) is similar to the provisions in paragraph 6(2) and (3) above concerning the Titles to Land Consolidation (Scotland) Act 1868. It disapplies the provisions of the 1924 Act in relation to the Land Register, because the matters in question will be dealt with by the caveat procedure.
294. Subparagraph (5) amends schedule B to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

***Paragraph 10 - Burgh Registers (Scotland) Act 1926***

295. This paragraph is self-explanatory.

***Paragraph 11 - Public Registers and Records (Scotland) Act 1948***

296. This paragraph repeals a power to prescribe the forms of documents in the Sasines register made redundant by the Act.

***Paragraph 12 - Land Drainage (Scotland) Act 1958***

297. This paragraph amends the definition of long lease by adding a reference to the Land Register.

***Paragraph 13 - Harbours Act 1964***

298. This paragraph amends the definition of long lease by adding a reference to the Land Register.

***Paragraph 14 - Succession (Scotland) Act 1964***

299. This amendment is consequential on the changes made to the Requirements of Writing (Scotland) Act 1995. The reference to section 4 is replaced by a reference to the equivalent provision in the 1995 Act as amended.

***Paragraph 15 - Industrial and Provident Societies Act 1965***

300. Subparagraphs (2) and (3) amend the sections mentioned to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.
301. Subparagraphs (4) and (5) amend the notes about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form.

***Paragraph 16 - Gas Act 1965***

302. This paragraph amends the definition of long lease by adding a reference to the Land Register.

***Paragraph 17 - Conveyancing and Feudal Reform (Scotland) Act 1970***

303. The 1970 Act was not amended by the 1979 Act so as to take account of the introduction of the Land Register. The 1970 Act was instead subject to the "translation" provision in section 29(2) of the 1979 Act under which references to the Register of Sasines and the recording of deeds in that register were deemed to be references to the Land Register or registration. This approach has not made the 1970 Act easy to understand. The majority of amendments in this paragraph are designed to add references (where appropriate) to the Land Register.
304. The amendment to section 28(5) updates the means of describing the security subjects in a decree of foreclosure following the partial repeal of the 1979 Act.
305. The notes that are found in various schedules about mode of execution under the Requirements of Writing (Scotland) Act 1995 are amended to take account of documents in electronic form.

***Paragraph 18 - Prescription and Limitation (Scotland) Act 1973***

306. Subparagraph (2) saves and consequently amends section 1 of the 1973 Act.
307. Subparagraph (3)(a) and (b) amend section 2 of the 1973 Act by adding references to registration in the Land Register.
308. Subparagraph (3)(c) updates the references in section 2 to section 3(3) of the 1979 Act. The new sections 20B and 20C of the 1857 Act replace section 3(3) in relation to leases.
309. Subparagraph (4) inserts a new section 1A into the 1973 Act clarifying the effect of prescription on a right which was previously void (as opposed to voidable).
310. Subparagraph (5) adds a reference to registration in the Land Register to the end of section 15(1) of the 1973 Act.
311. Subparagraphs (6) and (7) make changes to schedule 1 of the 1973 Act to implement the policy that the period of negative prescription should be five years for claims against the Keeper where the Register has been rectified in favour of the claimant and twenty years

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

for claims against the Keeper arising out of breach of warranty or from the operation of the realignment principle.

312. Subparagraph (8) amends schedule 3 to the 1973 Act by adding the obligation of the Keeper to rectify an inaccuracy to the list of imprescriptible rights and obligations.

***Paragraph 19 - Land Registration (Scotland) Act 1979***

313. This paragraph specifies the technical changes that constitute the partial repeal of the 1979 Act.

***Paragraph 20 - Education (Scotland) Act 1980***

314. This paragraph amends section 16(2) of the Education (Scotland) Act 1980 to take account of the fact that as from the designated day it will not be possible to record a disposition in the Register of Sasines.

***Paragraph 21 - Water (Scotland) Act 1980***

315. Subparagraphs (2), (3) and (4) amend the provisions referred to by adding a reference to registration in the Land Register.

316. Subparagraph (5) is self-explanatory.

***Paragraph 22 - Matrimonial Homes (Family Protection) (Scotland) Act 1981***

317. This paragraph replaces the reference to the 1979 Act with a reference to the equivalent provision in the Act.

***Paragraph 23 - Civil Aviation Act 1982***

318. This paragraph simplifies and updates the provisions referred to following the partial repeal of the 1979 Act.

***Paragraph 24 - Litter Act 1983***

319. This paragraph simplifies and updates section 8 of the 1983 Act following the partial repeal of the 1979 Act.

***Paragraph 25 - Health and Social Services and Social Security Adjudications Act 1983***

320. This paragraph replaces the reference to the 1979 Act with a reference to the Act.

***Paragraph 26 - Telecommunications Act 1984***

321. This paragraph, which amended the 1979 Act, is to be repealed following the partial repeal of that Act.

***Paragraph 27 - Matrimonial and Family Proceedings Act 1984***

322. This paragraph, which amended the 1979 Act, can be repealed following the partial repeal of that Act.

***Paragraph 28 - Bankruptcy (Scotland) Act 1985***

323. Subparagraph (2) replaces a reference to the 1979 Act with a reference to the equivalent provisions in the Act.

***Paragraph 29 - Housing Associations Act 1985***

324. This paragraph adds a reference to registration in the Land Register into the 1985 Act.

***Paragraph 30 - Law Reform (Miscellaneous Provisions) (Scotland) Act 1985***

325. This paragraph disapplies section 8(7) of the 1985 Act to the Land Register. The reason is that the matter will be covered by the caveat procedure in relation to property in the Land Register.

***Paragraph 31 - Electricity Act 1989***

326. This paragraph is self-explanatory.

***Paragraph 32 - Property Misdescriptions Act 1991***

327. This paragraph replaces the reference to *interest* in land, which is the language of the 1979 Act, with a reference to *right* in land, which is the language of the Act.

***Paragraph 33 - Agricultural Holdings (Scotland) Act 1991***

328. This amendment adds a reference to registration following the amendment of the 1857 Act to include references to registration in the Land Register.

***Paragraph 34 - Coal Industry Act 1994***

329. This repeals paragraph 20 of the 1994 Act, which inserted an overriding interest relating to the Coal Authority into the Land Registration (Scotland) Act 1979.

***Paragraph 35 - Land Registers (Scotland) Act 1995***

330. This paragraph amends the 1995 Act to reference the new fee power contained within the Act.

***Paragraph 36 - Petroleum Act 1998***

331. This paragraph amends section 5(9) to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.

***Paragraph 37 - Public Finance and Accountability (Scotland) Act 2000***

332. Section 25 of the 1868 Act is repealed and replaced by section 110 of the Act. This paragraph makes the necessary consequential change to the 2000 Act.

***Paragraph 38 - Adults with Incapacity (Scotland) Act 2000***

333. Under the new scheme, there will be no land certificates or office copies but there will be extracts. Subparagraphs (2) and (3) make the necessary changes to the sections mentioned.

334. Subparagraph (4) amends the provisions mentioned to take account of the partial repeal of the 1979 Act. In future, it will not be possible to register an event or death directly in the Land Register. Registration will have to proceed on the basis of a deed such as an interlocutor.

***Paragraph 39 - Abolition of Feudal Tenure etc. (Scotland) Act 2000***

335. Subparagraph (3) replaces the reference to the 1979 Act with a reference to the equivalent provision in the Act.

336. Subparagraph (5) replaces the reference to interest in land with a reference to right in land. The amendment also reflects the fact that under the new scheme registration requires to proceed on the basis of a deed.

337. Subparagraph (8) amends section 73 so as to apply the translation provisions to extracts and certified copies issued under the Act.

***Paragraph 40 - Standards in Scotland's Schools etc. Act 2000***

338. This paragraph replaces the reference to *interests* in land, which is the language of the 1979 Act, with a reference to *rights* in land, which is the language of the Act.

***Paragraph 41 - National Parks (Scotland) Act 2000***

339. This paragraph replaces the references to *interest* in land, which is the language of the 1979 Act, with a reference to *right* in land, which is the language of the Act.

***Paragraph 42 - Housing (Scotland) Act 2001***

340. This paragraph amends the two sections mentioned to take account of the extension of the 1995 Act to documents in electronic form.

***Paragraph 43 - Title Conditions (Scotland) Act 2003***

341. Subparagraphs (3) and (5) replace the reference to the 1979 Act with a reference to the equivalent provision of the Act. Subparagraph (3) also makes a consequential amendment to section 60 following the repeal of section 15(3) of the 1979 Act.
342. Subparagraph (9) amends section 84(2) to take account of the extension of the 1995 Act to documents in electronic form.
343. Subparagraph (11) makes clear that in the case of a notice of title if a title condition is set out in a midcouple then the midcouple and the notice of title together are to be treated as the constitutive deed.
344. Subparagraph (11) also makes a consequential change to take account of the new title of section 3 of the 1857 Act.

***Paragraph 44 - Civil Partnership Act 2004***

345. This paragraph replaces the references to the 1979 Act with references to the equivalent provisions in the Act.

***Paragraph 45 - Stirling-Alloa-Kinross Railway and Linked Improvements Act 2004***

346. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (3).

***Paragraph 46 - Tenements (Scotland) Act 2004***

347. The 1979 Act referred to interests in land. The Act does not use that concept. Subparagraphs (2) and (3) make the necessary consequential changes.

***Paragraph 47 - Edinburgh Tram (Line Two) Act 2006***

348. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (5).

***Paragraph 48 - Edinburgh Tram (Line One) Act 2006***

349. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (5).

***Paragraph 49 - Waverley Railway (Scotland) Act 2006***

350. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (3).

***Paragraph 50 - Companies Act 2006***

- 351. Subparagraphs (2) and (3) amend the provisions mentioned to take account of the extension of the 1995 Act to documents in electronic form.
- 352. Subparagraph (4) substitutes a reference to the 1979 Act with a reference to the Act.

***Paragraph 51 - Glasgow Airport Rail Link Act 2007***

- 353. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (3).

***Paragraph 52 - Bankruptcy and Diligence etc. (Scotland) Act 2007***

- 354. Subparagraph (2) amends the new section 13A of the 1970 Act.
- 355. Subparagraph (3) replaces the reference to the 1979 Act with a reference to the equivalent provision in the Act.

***Paragraph 53 - Edinburgh Airport Rail Link Act 2007***

- 356. Subparagraph (2) replaces a reference to the 1979 Act with a reference to the equivalent provision in the Act.
- 357. Subparagraph (3) removes a reference to the 1979 Act and clarifies the meaning of subsection (6).

***Paragraph 54 - Airdrie-Bathgate Railway and Linked Improvements Act 2007***

- 358. Subparagraph (2) replaces a reference to the 1979 Act with a reference to the equivalent provision in the Act.
- 359. Subparagraph (3) removes a reference to the 1979 Act and clarifies the meaning of subsection (6).

***Paragraph 55 - Energy Act 2008***

- 360. This paragraph amends section 77(7) to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.