



Land Registration etc. (Scotland) Act 2012

2012 asp 5

PART 2

REGISTRATION

Prescriptive claimants etc.

43 Prescriptive claimants

- (1) For the purposes of sections 23(1)(b), and 26(1)(a), a disposition is to be treated as being valid despite not being so if the conditions mentioned in subsections (2) to (4) are met.
- (2) It appears to the Keeper that the disposition is not valid (or, as regards part of the land to which the application relates, is not valid) for the reason only that the person who granted it had no title to do so.
- (3) The applicant satisfies the Keeper that the land to which the application relates (or as the case may be the part in question) has been possessed openly, peaceably and without judicial interruption—
 - (a) by the disponent or the applicant for a continuous period of 1 year immediately preceding the date of application, or
 - (b) first by the disponent and then by the applicant for periods which together constitute such a period.
- (4) The applicant satisfies the Keeper that the following person has been notified of the application—
 - (a) the proprietor,
 - (b) if there is no proprietor (or none can be identified), any person who appears to be able to take steps to complete title as proprietor, or
 - (c) if there is no proprietor and no such person (or, in either case, none can be identified), the Crown.
- (5) For the purposes of section 26(1)(a), a deed is to be treated as being valid despite not being so if—
 - (a) the deed is granted by or is directed against a prescriptive claimant, and

Changes to legislation: Land Registration etc. (Scotland) Act 2012, Cross Heading: Prescriptive claimants etc. is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (b) the application would be accepted were the prescriptive claimant's title valid.
- (6) In subsection (5), a “prescriptive claimant” is—
 - (a) a person whose name is entered as proprietor in the proprietorship section of a title sheet, on an application being accepted by virtue of subsection (1),
 - (b) a person whose name is entered as holder of a right, in the appropriate section of a title sheet, the entry in relation to the right being one marked provisional under section 81(3)(a)(i),
 - (c) any person in right of a person mentioned in paragraph (a) or (b).
- (7) Land register rules may make further provision about notification under subsection (4).
- (8) The Scottish Ministers may, by order, amend subsection (3) so as to substitute for the period for the time being mentioned there a different period.
- (9) Before making such an order, the Scottish Ministers must consult the Keeper.

Commencement Information

II [S. 43](#) in force at 8.12.2014 by [S.S.I. 2014/127](#), [art. 2](#)

44 Provisional entries on title sheet

- (1) Where the Keeper accepts an application under section 21 by virtue of section 43(1) or (5), the Keeper is to mark any resulting entry in the title sheet as provisional.
- (2) The Keeper is to remove the provisional marking from an entry if and when the real right to which the entry relates becomes, under section 1 of the Prescription and Limitation (Scotland) Act 1973 (c.52) (validity of right), exempt from challenge.
- (3) While an entry remains provisional—
 - (a) it does not affect any right held by any person in the land to which the entry relates, and
 - (b) rights set out in the register are not to be altered or deleted by virtue only of the entry.

Commencement Information

I2 [S. 44](#) in force at 8.12.2014 by [S.S.I. 2014/127](#), [art. 2](#)

45 Notification of prescriptive applications

- (1) Before accepting an application under section 21 which is received by virtue of section 43(1), the Keeper must notify—
 - (a) the proprietor,
 - (b) if there is no proprietor (or none can be identified), any person who appears to the Keeper able to take steps to complete title as proprietor, or
 - (c) if there is no proprietor and no such person (or, in either case, none can be identified), the Crown.

Changes to legislation: Land Registration etc. (Scotland) Act 2012, Cross Heading: Prescriptive claimants etc. is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (2) The Keeper's duty to notify persons under subsection (1) only applies in so far as the Keeper considers it reasonably practicable to notify them.
- (3) Notification is to be by such means as the Keeper considers appropriate.
- (4) A person to whom notice is given under subsection (1) may object in writing to the application being accepted.
- (5) If the Keeper receives such an objection within 60 days of the notice, the Keeper must reject the application.
- (6) Land register rules may make further provision about notification under subsection (1).
- (7) The Scottish Ministers may, by order, amend subsection (5) so as to substitute for the number of days for the time being mentioned there a different number of days.
- (8) Before making such an order, the Scottish Ministers must consult the Keeper.

Commencement Information

I3 [S. 45](#) in force at 8.12.2014 by [S.S.I. 2014/127](#), [art. 2](#)

Changes to legislation:

Land Registration etc. (Scotland) Act 2012, Cross Heading: Prescriptive claimants etc. is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 48A48B and cross-heading inserted by [2016 asp 18 s. 43\(2\)](#)
- s. 116(3)(ba)(bb) inserted by [2016 asp 18 s. 43\(3\)](#)