

# LAND REFORM (SCOTLAND) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 – Information about Control of Land Etc.**

##### **Information relating to proprietors of land etc.**

##### ***Section 43 – Power of Keeper to request or require information relating to proprietors of land etc.***

143. This section amends the Land Registration etc. (Scotland) Act 2012 to insert new sections 48A and 48B.
144. Inserted section 48A(1) provides a power for the Scottish Ministers to make regulations allowing the Keeper to request or require information relating to the category of person or body into which a relevant person falls. A relevant person is a person mentioned in inserted section 48A(2) falls.
145. Inserted section 48A(2) provides that the relevant persons are (a) the owners of plots of land, (b) proprietors of registered plots of land and registered leases and (c) tenants of leases which are registered or registrable.
146. Inserted section 48A(3) sets out matters that regulations made under section 48A(1) may include. This is not an exhaustive list.
147. Inserted section 48A(3)(a) provides that regulations may make provision about the persons who are owners, proprietors and tenants for the purposes of subsection (1). For example, the regulations may set out the persons about whom information may be requested or required will be proprietors of registered plots or tenants of registered leases.
148. Inserted section 48A(3)(b) provides that regulations may make provision about the information relating to the category of person or body into which the relevant person falls. For example, provision may be made for the Keeper to require information from proprietors which states whether they are a community body or charity (or equivalent). Inserted section 48A(3)(c) provides that regulations may make provision about the form in which information is to be provided to the Keeper. For example, regulations may provide that the information be provided as part of an application form to register a deed in the Land Register. In addition this subsection provides that the information may be provided by the proprietor or on behalf of a proprietor, for example by their legal representative.
149. Inserted section 48A(3)(d) provides that regulations may specify the circumstances where information may be requested by the Keeper. Where information is requested from a person there will be no obligation on that person to provide this information, and no sanction for not providing the information.
150. Inserted section 48A(3)(e) provides that regulations may specify circumstances where the Keeper may require information to be provided, and circumstances where

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information is not required. Where information is required there may be a sanction for failure to provide the information.

151. Inserted section 48A(3)(f) provides that the regulations may specify if providing information under the regulations will have any effect or will not have any effect.
152. Inserted section 48A(3)(g) provides that the regulations may set out how the information provided under the regulations, whether requested or required, will be entered on the Land Register.
153. Inserted section 48A(3)(h) provides that regulations may provide if the information obtained under the regulations will, or will not, be subject to the Keeper's warranty under Part 7 of the Land Registration etc. (Scotland) Act 2012.
154. Inserted section 48A(3)(i) provides that regulations may set out when information that has been disclosed under regulations made under section 48A(1) can be corrected or updated. For example, where a proprietor provides information that it is a community body and then it ceases to be so, the regulations may set out how the proprietor can notify the Keeper of this change.
155. Inserted section 48A(3)(j) provides that regulations may set out when the Keeper could provide information obtained under regulations made under section 48(1) to other persons.
156. Inserted section 48A(3)(k) provides that regulations may set out when the information obtained under the regulations made under subsection (1) can be published.
157. Inserted section 48A(3)(l) provides that regulations may set out the fees to be payable to the Keeper for providing, correcting or updating the information that is requested or required under the regulations.
158. Inserted section 48A(4) provides that regulations may include provision for an offence for a failure to comply with the requirements imposed by the regulations. This only applies where the regulations require the provision of information.
159. Inserted section 48A(5) provides that where the regulations provide for an offence for failure to comply with the requirements of the regulations, the regulations must provide that the offence is triable summarily only and the maximum penalty that can be imposed is a fine that can be no more than level 3 on the standard scale.
160. Inserted section 48A(6) provides that, before regulations are laid in draft before the Scottish Parliament, the Scottish Ministers must consult the Keeper.
161. The inserted section 48B(1) provides a power for the Scottish Ministers to make regulations enabling the Keeper to enter information relating to the category of person or body into which a relevant person falls in the Land Register. Regulations made under this section would allow the Keeper to enter certain information in the Land Register on their own initiative without requesting or requiring the information from a relevant person.
162. The inserted section 48B(2) provides that the persons referred to in subsection (1) as "relevant persons" are (a) the owners of plots of land, (b) proprietors of registered plots of land and registered leases and (c) tenants of leases which are registered or registrable.
163. The inserted section 48B(3) sets out matters regulations made under section 48B(1) may include. This is not an exhaustive list.
164. The inserted section 48B(3)(a) provides that regulations may make provision about the persons who are owners, proprietors and tenants for the purposes of subsection (2). For example, the regulations may set out the proprietors of registered plots and tenants of registered leases are persons about whom the Keeper can enter certain information on the Land Register on her own initiative.

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165. The inserted section 48B(3)(b) provides that regulations may set out details about notifications by the Keeper about the intention to enter in the Land Register information about the category of person. For example, regulations may provide for the notification to be sent to an owner of land about the Keeper's intention to enter information about the category of person on body that the proprietor falls into in a particular title sheet.
166. Inserted section 48B(3)(c) provides that regulations can set out the circumstances when the Keeper may enter information in the Land Register. For example, the regulations could set out that if the category of person or body that an owner of land falls into is clear the Keeper may update the Land Register to include information about the category of the owner of land.
167. Inserted section 48B(3)(d) provides that regulations may specify the information that may be entered in the Land Register and the form in which it is to be entered. This provides that the regulations can specify the categories of person or body that can be entered in the Land Register. For example, the categories may include Scottish local authority, companies or community bodies. The regulations may specify how this information is to be entered in the Land Register, for example it may be entered as a note in the proprietorship section of the title sheet.
168. Inserted section 48B(3)(e) provides that the regulations may specify if the Keeper entering information in the Land Register, as permitted by the regulations under this section, will have any effect.
169. Inserted section 48B(3)(f) provides that the regulations may set out whether the warranty under Part 7 of the Land Registration etc. (Scotland) 2012 will, or will not, apply, to information about the category of person or body that has been entered in the Land Register by the Keeper.
170. Inserted section 48B(3)(g) provides that the regulations may set out how the information entered on the Land Register may be corrected or updated. For example, the regulations may provide that if the Keeper is satisfied that the information is inaccurate it should be corrected. The regulations may also provide that the person who the information relates to could apply to have the information the Keeper has entered in the register updated where the information has changed, for example where an owner of land has ceased to have charitable status they may wish the Land Register to be updated to reflect the change in category, if this is a category that is specified in the regulations.
171. Inserted section 48B(3)(h) provides that regulations may set out that the Keeper may provide information that she has entered on the Land Register under these regulations to another person in certain circumstances. For example the information about the category of owners and tenants of land may be useful to the Scottish Government to assist in monitoring the Scottish Government's stated policy aim of increasing the amount of land in community ownership to 1 million acres by 2020, the regulations may provide that the Keeper could provide information that she has entered on the Land Register under the regulations about the land owned by a community body to the Scottish Government.
172. Inserted section 48B(3)(i) provides that regulations may set out how the information entered under the regulations is published. That could include publication by entering the information in the Land Register or publication by other means, such as a report on land mass coverage.
173. Inserted section 48B(3)(j) provides that the regulations may set out fees for correcting or updating the information entered on the Land Register by the Keeper under the regulations. There is no requirement for a fee to be charged for correcting or updating the information.
174. Inserted section 48B(4) provides that before the regulations are laid in draft before the Scottish Parliament the Scottish Ministers must consult the Keeper.

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175. Subsection (3) amends section 116 of the Land Registration etc. (Scotland) Act 2012. This provides that the affirmative procedure will apply to regulations under the new sections 48A(1) and 48B(1)
176. Subsection (4) amends section 121 of the Land Registration etc. (Scotland) Act 2012 to provide that the Crown cannot be criminally liable for any breaches of the requirements imposed by regulations made under section 48A(1).