

## SCHEDULES

### SCHEDULE 4

Section 33(2)

#### LAND OWNERSHIP AND TRANSACTIONS: SCOTLAND

#### PART 1

##### AMENDMENTS

##### *Conveyancing (Scotland) Act 1924*

- 1 (1) Section 4A of the Conveyancing (Scotland) Act 1924 (completion of title by registration of notice of title in Land Register of Scotland) is amended as follows.
- (2) The existing text becomes subsection (1).
- (3) After that subsection insert—
- “(2) Subsection (1) is subject to paragraphs 3 and 4 of schedule 1A to the Land Registration etc. (Scotland) Act 2012.”

##### *Land Registration etc. (Scotland) Act 2012 (asp 5)*

- 2 The Land Registration etc. (Scotland) Act 2012 is amended as follows.
- 3 In section 21 (application for registration of deed)—
- (a) in subsection (4), after “45(5)” insert “and paragraphs 1 to 5 of schedule 1A”, and
- (b) after that subsection insert—
- “(5) Schedule 1A makes provision about certain land transactions involving overseas entities.”
- 4 In section 27 (application for voluntary registration), after subsection (4) insert—
- “(4A) Subsection (3) is subject to paragraph 6 of schedule 1A.”
- 5 In section 46 (the title of which becomes “Meaning of “disposition” in certain provisions”)—
- (a) after “48” insert “and schedule 1A”, and
- (b) after “sections” insert “or that schedule”.
- 6 The italic heading before section 112 becomes “Offences”.
- 7 After section 112 insert—

**“112A Offence by overseas entity**

- (1) An overseas entity must not deliver to a person a qualifying registrable deed granted by the overseas entity if (disregarding the possibility of consent under paragraph 7(2) of schedule 1A) by virtue of paragraph 2 of schedule 1A the Keeper would be required to reject an application under section 21 for registration of the deed.
- (2) A qualifying registrable deed is to be treated as having been granted for the purposes of subsection (1) even if at the time when it is delivered it has been executed by the overseas entity only.
- (3) If an overseas entity breaches subsection (1), an offence is committed by—
  - (a) the entity, and
  - (b) every officer of the entity who is in default.
- (4) Nothing in this section affects the validity of a qualifying registrable deed delivered in breach of subsection (1).
- (5) A person guilty of an offence under subsection (3) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).
- (6) Sections 1121 to 1123 of the Companies Act 2006 (liability of officers in default: interpretation etc.) apply for the purposes of this section as they apply for the purposes of provisions of the Companies Acts.
- (7) In those sections as applied, a reference to an officer includes a person in accordance with whose directions or instructions the board of directors or equivalent management body of an overseas entity are accustomed to act.
- (8) A person is not to be regarded as falling within subsection (7) by reason only that the board of directors or equivalent management body acts on advice given by the person in a professional capacity.
- (9) In this section—
 

“overseas entity” has the meaning given by section 2 of the Economic Crime (Transparency and Enforcement) Act 2022;

“qualifying registrable deed” means a registrable deed which is—

  - (a) a disposition;
  - (b) a standard security;
  - (c) a lease;
  - (d) an assignation of a lease.”

- 8 In section 116(2) (orders and regulations subject to the negative procedure)—
- (a) for “sections”, in the first place it occurs, substitute “provisions”, and
  - (b) after paragraph (h) insert—
 

“(i) paragraph 2(5) or 7(5) of schedule 1A.”

- 9 After schedule 1 insert—

“SCHEDULE  
1A

Section 21

LAND TRANSACTIONS: OVERSEAS ENTITIES

**Cases where Keeper must reject application under section 21**

- 1 (1) This paragraph applies where—
  - (a) a person applies under section 21 for registration of a qualifying registrable deed, and
  - (b) if the application is accepted by the Keeper—
    - (i) the name of an overseas entity would be entered as proprietor in the proprietorship section of the title sheet of a registered plot of land, or
    - (ii) an overseas entity would be the tenant under a registered lease.
- (2) The Keeper must reject the application unless the overseas entity is—
  - (a) a registered overseas entity, or
  - (b) an exempt overseas entity.
- (3) Sub-paragraph (2) does not apply where—
  - (a) the application is made by a person other than the overseas entity referred to in sub-paragraph (1)(b)(i), and
  - (b) the deed in respect of which the application is made is a lease or an assignation of a lease the subjects of which consist of or form part of an unregistered plot of land of which that overseas entity is the proprietor.
- 2 (1) This paragraph applies where—
  - (a) a person applies under section 21 for registration of a qualifying registrable deed or a registrable deed which is a standard security,
  - (b) the granter of the deed is an overseas entity whose interest is registered, having been so registered on or after 8 December 2014, and
  - (c) as at the date of delivery of the deed, the entity was not a registered overseas entity or an exempt overseas entity.
- (2) The Keeper must reject the application unless one of the following conditions is met—
  - (a) the application is made—
    - (i) in pursuance of a statutory obligation or court order, or
    - (ii) in respect of a transfer of ownership or other event that occurs by operation of law,
  - (b) the application is made in pursuance of a contract entered into before the later of the dates mentioned in sub-paragraph (3);
  - (c) the application is made in pursuance of the exercise of a power of sale or lease by the creditor in a standard security that was registered on or after 8 December 2014;

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- (d) the application is made in pursuance of the exercise of a right conferred on a body by relevant legislation to buy land or the interest of a tenant under a lease;
  - (e) the Scottish Ministers give consent under paragraph 7(2) to the registration of the deed;
  - (f) the deed is granted by a specified insolvency practitioner in specified circumstances.
- (3) The dates are—
- (a) the date on which the granter’s interest was registered;
  - (b) the commencement date.
- (4) In sub-paragraph (2)(d), “relevant legislation” means Part 2, 3 or 3A of the Land Reform (Scotland) Act 2003 or Part 5 of the Land Reform (Scotland) Act 2016 (being provisions which confer on certain community bodies etc. the right to buy certain types of land or the interest of a tenant under a lease of certain types of land).
- (5) In sub-paragraph (2), in paragraph (f)—
- “specified circumstances” means circumstances specified in regulations made by the Scottish Ministers for the purposes of that paragraph;
  - “specified insolvency practitioner” means an insolvency practitioner of a description specified in regulations made by the Scottish Ministers for the purposes of that paragraph.

### **Cases where Keeper must reject application to register notice of title**

- 3 (1) This paragraph applies where—
- (a) by virtue of section 4A of the Conveyancing (Scotland) Act 1924, a person makes an application under section 21 for registration of a notice of title completing title in respect of a qualifying registrable deed, and
  - (b) if the application is accepted by the Keeper—
    - (i) the name of an overseas entity would be entered as proprietor in the proprietorship section of the title sheet of a registered plot of land, or
    - (ii) an overseas entity would be the tenant under a registered lease.
- (2) The Keeper must reject the application unless the overseas entity is—
- (a) a registered overseas entity, or
  - (b) an exempt overseas entity.
- (3) Sub-paragraph (2) does not apply where—
- (a) the application is made by a person other than the overseas entity referred to in sub-paragraph (1)(b)(i), and
  - (b) the deed in respect of which title is being completed is a lease or an assignation of a lease the subjects of which consist of or form part of an unregistered plot of land of which that overseas entity is the proprietor.

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- 4 (1) This paragraph applies where—
- (a) by virtue of section 4A of the Conveyancing (Scotland) Act 1924, a person makes an application under section 21 for registration of a notice of title completing title in respect of—
    - (i) a qualifying registrable deed, or
    - (ii) a registrable deed which is a standard security,
  - (b) the granter of the deed is an overseas entity whose interest is registered, having been so registered on or after 8 December 2014, and
  - (c) as at the date on which the application for registration of the notice of title was made, the entity was not a registered overseas entity or an exempt overseas entity.
- (2) The Keeper must reject the application unless one of the following conditions is met—
- (a) the application is made—
    - (i) in pursuance of a statutory obligation or court order, or
    - (ii) in respect of a transfer of ownership or other event that occurs by operation of law,
  - (b) the application is made in pursuance of a contract entered into before the later of the dates mentioned in sub-paragraph (3);
  - (c) the application is made in pursuance of the exercise of a power of sale or lease by the creditor in a standard security that was registered on or after 8 December 2014;
  - (d) the application is made in pursuance of the exercise of a right conferred on a body by relevant legislation to buy land or the interest of a tenant under a lease;
  - (e) the Scottish Ministers give consent under paragraph 7(4) to the registration of the notice of title;
  - (f) the deed in respect of which title is being completed is granted by a specified insolvency practitioner in specified circumstances.
- (3) The dates are—
- (a) the date on which the granter’s interest was registered;
  - (b) the commencement date.
- (4) In sub-paragraph (2)(d), “relevant legislation” means Part 2, 3 or 3A of the Land Reform (Scotland) Act 2003 or Part 5 of the Land Reform (Scotland) Act 2016 (being provisions which confer on certain community bodies etc. the right to buy certain types of land or the interest of a tenant under a lease of certain types of land).
- (5) In sub-paragraph (2)(f) “specified circumstances” and “specified insolvency practitioner” have the meanings given by paragraph 2(5).

#### **Case where Keeper must reject prescriptive application**

- 5 (1) This paragraph applies where—
- (a) an application under section 21 is received by the Keeper by virtue of section 43(1) or (5), and

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- (b) if the application is accepted by the Keeper—
  - (i) the name of an overseas entity would be entered as proprietor in the proprietorship section of the title sheet of a registered plot of land, and
  - (ii) that entry would be marked as provisional under section 44(1).
- (2) The Keeper must reject the application unless the overseas entity is—
  - (a) a registered overseas entity, or
  - (b) an exempt overseas entity.

#### **Case where Keeper must reject voluntary application**

- 6 (1) This paragraph applies where—
  - (a) an application is made under section 27, and
  - (b) if the application is accepted by the Keeper, the name of an overseas entity would be entered as proprietor in the proprietorship section of the title sheet of a registered plot of land.
- (2) The Keeper must reject the application unless the overseas entity is—
  - (a) a registered overseas entity, or
  - (b) an exempt overseas entity.

#### **Consent to registration of certain deeds that cannot otherwise be registered**

- 7 (1) Sub-paragraph (2) applies where the Keeper would be required by paragraph 2(2) to reject an application for registration of a qualifying registrable deed or a registrable deed which is a standard security.
- (2) The Scottish Ministers may consent to registration of the deed if satisfied—
  - (a) that at the time of delivery of the deed the person in whose favour it was granted did not know, and could not reasonably have been expected to know, of the duty imposed on the Keeper by paragraph 2(2), and
  - (b) that in all the circumstances it would be unjust for the deed not to be registered.
- (3) Sub-paragraph (4) applies where the Keeper would be required by paragraph 4(2) to reject an application for registration of a notice of title in respect of a qualifying registrable deed or a registrable deed which is a standard security.
- (4) The Scottish Ministers may consent to registration of the notice of title if satisfied—
  - (a) that at the time of delivery of the qualifying registrable deed or (as the case may be) registrable deed which is a standard security the person in whose favour the deed was granted did not know, and could not reasonably have been expected to know, of the duty imposed on the Keeper by paragraph 4(2), and

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- (b) that in all the circumstances it would be unjust for the notice of title not to be registered.
- (5) The Scottish Ministers may by regulations make provision in connection with applications for consent, and the giving of consent, under sub-paragraphs (2) and (4).
- (6) The regulations may, for example, make provision about—
  - (a) who may apply;
  - (b) evidence;
  - (c) time limits.

### **Partially executed deeds**

- 8 For the purposes of paragraphs 2(1)(c) and 7(2)(a) and (4)(a), a qualifying registrable deed or registrable deed which is a standard security is to be treated, as at the date of delivery of the deed, as having been granted even if at that time it has been executed by the overseas entity only.

### **Interpretation**

- 9 (1) In this schedule—
  - “the commencement date” means the day on which Part 1 of Schedule 4 to the Economic Crime (Transparency and Enforcement) Act 2022 comes into force;
  - “exempt overseas entity” means an overseas entity of a description specified in regulations under section 34(6) of the Economic Crime (Transparency and Enforcement) Act 2022;
  - “overseas entity” has the meaning given by section 2 of the Economic Crime (Transparency and Enforcement) Act 2022;
  - “qualifying registrable deed” means a registrable deed which is—
    - (a) a disposition;
    - (b) a lease;
    - (c) an assignment of a lease;
  - “register of overseas entities” means the register kept under section 3 of the Economic Crime (Transparency and Enforcement) Act 2022;
  - “registered overseas entity” means an overseas entity that is registered in the register of overseas entities (but see sub-paragraphs (2) and (3)).
- (2) For the purposes of this Schedule, an overseas entity that fails to comply with the duty in section 7 of the Economic Crime (Transparency and Enforcement) Act 2022 (updating duty) is not to be treated as being a “registered overseas entity” until it remedies the failure.
- (3) For the purpose of sub-paragraph (2), an overseas entity “remedies” the failure when it delivers the statements and information mentioned in section 7(1)(a), (b) and (c) of the 2022 Act.”

**PART 2**

## TRANSITION: DEEDS REGISTERED PRE-COMMENCEMENT

*Duty to register as an overseas entity within transitional period*

- 10 (1) This paragraph applies where—
- (a) an overseas entity is entered as proprietor in the proprietorship section of the title sheet for a plot of land that is registered in the Land Register of Scotland, having been so entered during the pre-commencement period,
  - (b) in relation to a lease that was recorded in the General Register of Sasines or registered in the Land Register of Scotland before 8 December 2014, an overseas entity is, by virtue of an assignation of the lease registered in the Land Register of Scotland during the pre-commencement period, the tenant under the lease, or
  - (c) an overseas entity is the tenant under a lease that was registered in the Land Register of Scotland during the pre-commencement period.
- (2) An overseas entity, and every officer of the entity who is in default, commits an offence if—
- (a) on the expiry of the transitional period, the paragraph of sub-paragraph (1) that applied in relation to the overseas entity immediately before the beginning of the transitional period continues to apply in relation to the overseas entity, and
  - (b) the entity is not registered as an overseas entity, has not made an application for registration as an overseas entity that is pending and is not an exempt overseas entity.
- (3) A person guilty of an offence under this paragraph is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (4) Nothing in this paragraph limits the power to give a notice under section 34 at any time.

*Disapplication of certain provisions during transitional period*

- 11 (1) This paragraph applies where—
- (a) an overseas entity is entered as proprietor in the proprietorship section of the title sheet for a plot of land that is registered in the Land Register of Scotland, having been so entered during the pre-commencement period,
  - (b) in relation to a lease that was recorded in the General Register of Sasines or registered in the Land Register of Scotland before 8 December 2014, an overseas entity is, by virtue of an assignation of the lease registered in the Land Register of Scotland during the pre-commencement period, the tenant under the lease, or
  - (c) an overseas entity is the tenant under a lease that was registered in the Land Register of Scotland during the pre-commencement period.



- (2) During any part of the transitional period in which the paragraph of sub-paragraph (1) that applied in relation to the overseas entity during the pre-commencement period continues to apply in relation to the overseas entity, the Land Registration etc. (Scotland) Act 2012 (asp 5) (“the 2012 Act”) applies subject to the following modifications.
- (3) Section 112A of the 2012 Act does not apply in relation to the entity or an officer of the entity as regards the plot of land or, as the case may be, lease.
- (4) Paragraphs 2 and 4 of schedule 1A to the 2012 Act do not apply in relation to the entity as regards the plot of land or, as the case may be, lease.

### *Interpretation*

- 12 In this Part of this Schedule—
  - “the commencement date” means the day on which section 3(1) comes fully into force;
  - “exempt overseas entity” means an overseas entity of a description specified in regulations under section 34(6);
  - “lease” has the meaning given by section 113(1) of the Land Registration etc. (Scotland) Act 2012;
  - “plot of land” has the meaning given by section 113(1) of the Land Registration etc. (Scotland) Act 2012;
  - “pre-commencement period” means the period beginning with 8 December 2014 and ending immediately before the commencement date;
  - “proprietor” has the meaning given by section 113(1) of the Land Registration etc. (Scotland) Act 2012;
  - “transitional period” has the meaning given by section 41(10).
- 13 For the purposes of paragraphs 10(1)(a) and 11(1)(a)—
  - (a) references to an overseas entity’s being entered as proprietor in the proprietorship section of a title sheet are references to the name of the entity being so entered, and
  - (b) the date on which an overseas entity was entered as proprietor in the proprietorship section of a title sheet is, where the entry was made by virtue of an application for registration, the date of registration as determined under section 37 of the Land Registration etc. (Scotland) Act 2012 (date and time of registration).

## **PART 3**

### **POWER TO MAKE FURTHER PROVISION**

- 14 (1) The Secretary of State may by regulations make further or alternative provision for the purpose of requiring or encouraging an overseas entity that owns or holds a right or interest in or over land in Scotland, or enters into land transactions in Scotland, to register as an overseas entity.
- (2) No regulations may be made under this paragraph after the end of the transitional period (within the meaning given by section 41(10)).

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- (3) Regulations under this paragraph may amend, repeal or revoke provision made by this Schedule, or any provision made by or under any other Act or Act of the Scottish Parliament, made—
  - (a) before this Act, or
  - (b) later in the same session of Parliament as this Act.
- (4) The provision which may be made by regulations under this paragraph by virtue of section 67(3) includes (in addition to provision of the kind mentioned in subparagraph (3)) provision amending any other provision of this Part of this Act.
- (5) The Secretary of State must consult the Scottish Ministers before making regulations under this paragraph that contain provision that would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.
- (6) Regulations under this paragraph are subject to the affirmative resolution procedure.