

SCHEDULES

SCHEDULE 4

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.”