

LAND REGISTRATION ETC. (SCOTLAND) ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11: Miscellaneous and General

Deduction of title

Section 101: Deduction of title

230. This section is about uncompleted titles. It continues the rule that clauses of deduction of title are not necessary for deeds relating to property in the Land Register. It extends the current practice to provide that, where a disposition inducing first registration is granted by an unrecorded holder (also known as an uninfert proprietor), such a clause is no longer required. However, deeds recorded in the General Register of Sasines will still need such clauses (where appropriate). Links in title will still require to be exhibited in order to establish that the deed has been validly granted notwithstanding the fact that no deduction of title clause is required.

Notes on register

Section 102: Note of date on which entry in register is made

231. This section is self-explanatory

Appeals

Section 103: Appeals

232. This section is self-explanatory.

Extracts and certified copies

Section 104: Extracts and certified copies: general

233. Subsection (1) provides for the issuing of extracts of registered documents. Subsection (2) provides for the issuing of certified copies of pending documents. Subsection (7) allows the extract of a certified copy to be sent as an electronic document, for example by e-mail, if the person requests that the document be received in that form.

Section 105: Evidential status of extract or certified copy

234. This section ensures that extracts and certified copies can be accepted as sufficient evidence in court.

Section 106: Liability of Keeper in respect of extracts, information and lost documents etc.

235. This section means that the Keeper may be liable for loss caused by certain errors in extracts, certified copies and certain other information or for loss caused as a result of documents being lost, damaged or destroyed when with the Keeper. For example, if a disposition is lost in the Keeper's office, the Keeper may be liable for the costs of having it re-engrossed.

Information and access

Section 107: Information and access

236. This section is self-explanatory.

Keeper's functions

Section 108: Provisions of services by the Keeper

237. This section is largely self-explanatory and places on a statutory footing the Keeper's power to provide services such as the existing pre-registration enquiry service and title examination service.

Section 109: Performance of Keeper's functions during vacancy in office etc.

238. This section ensures that were the office of the Keeper to be vacant or the Keeper be incapable for the time being of acting, the validity of decisions made after that time on the Keeper's behalf by a member of the Keeper's staff are not deemed invalid.

Fees

Section 110: Fees

239. This section provides the fee power under which Scottish Ministers may authorise the Keeper of the Registers to charge fees for services provided in connection with the functions conferred on the Keeper by the Act.
240. Subsection (1)(a) allows Scottish Ministers to provide for what fees may be charged. Subparagraph (i) allows for the setting of fees for registration services in relation to any of the Keeper's registers (of which there are 16, including the Land Register, the General Register of Sasines, the Register of Inhibitions and the Books of Council and Session). This power includes power to set the rate at which fees are payable for certain services as well as to set the amount that can be charged for the registration of any particular type of application.
241. Subparagraphs (ii) and (iii) of subsection (1)(a) also apply to all of the Keeper's registers. In the case of sub-paragraph (iii) (the provision of information by the Keeper), subsection (4) makes clear that the fee power can cover extracts and copy certificates provided under section 104.
242. Subsection (1)(b) allows Scottish Ministers to provide for the method of payment of fees. For example, this may be used to facilitate direct debit.
243. Subsection (1)(c) allows Scottish Ministers to delegate the setting of fees to the Keeper within defined parameters. If used, this will allow fees to be increased or reduced between fee orders. This could allow, for example, the Keeper to increase or reduce the fee for a type of application for a period of time.
244. Subsection (2) allows different fees to be set for types of application. It would allow, for example, for the fee for the processing of electronic applications to be set at a lower

level than for paper applications or for the fee for voluntary registrations to be different to that for first registrations.

245. Subsection (3) ensures the Keeper is consulted about the Keeper's expenses (which the proceeds of the fees will meet) in advance of making an order under this section.
246. Subsection (4)(b) ensures that the power to provide consultancy services under section 108 is not affected by this section.

Duty to take reasonable care

Section 111: Duties of certain persons

247. This section creates a statutory duty of care on applicants, granters of deeds to be registered, and the solicitors of both, in favour of the Keeper. The duty is to ensure that the documentation or evidence submitted with an application or otherwise supplied in the course of an application does not induce the Keeper to make the register inaccurate. The duty extends until the Keeper has made the registration decision.

Offence

Section 112: Offence relating to applications for registration

248. Subsection (1) provides that it is an offence for any party submitting an application to the Keeper knowingly or recklessly to include materially false or misleading statements or to fail to disclose material information in such an application. The offence does not strike at an error in an application for registration that is genuine and not knowing or reckless. Subsection (2) makes it clear that the offence can apply to both applicants for registration and their solicitors.
249. The effect of the defence in subsections (3) and (4) is that a person will not commit an offence under this section if they give the Keeper information in good faith having taken all reasonable precautions.
250. Subsections (6) to (8) mean a person may only rely on the defence in subsection (2) if they have given the prosecutor prior notice or if the court grants leave.

General provisions

Section 113: Interpretation

251. This section is self-explanatory.

Section 114: References to "registering" etc. in the Land Register of Scotland

252. This section is self-explanatory.

Section 115: Land Register rules

253. This section gives the Scottish Ministers power, in consultation with the Keeper to make rules in relation to the Land Register. The rules are to be made by regulations and subsection (1) sets out the range of matters that the rules may cover.

Section 116: Subordinate legislation

254. This section outlines the parliamentary procedures to which the powers for making subordinate legislation by order, regulations or rules under the Act are to be subject.

Section 117: Ancillary provision

255. This section is self-explanatory.

Section 118: Transitional provisions

256. This section is self-explanatory.

Section 119: Minor and consequential modifications

257. This section is self-explanatory.

Section 120: Saving provisions

258. This section contains saving provisions. Subsection (1) clarifies that the amendments made to the Prescription and Limitation (Scotland) Act 1973 as stated in the subsection do not strike at any a title acquired by prescription prior to the designated day.

259. Subsection (2) clarifies that section 28(1) of the Land Registration (Scotland) Act 1979 (“the 1979 Act”), is still applicable to the sections of the 1979 Act listed in the subsection. See paragraph 19 of Schedule 5 for minor and consequential amendments to the 1979 Act.

Section 121: Crown application

260. This section is self-explanatory.

Section 122: The designated day

261. This section gives the Scottish Ministers power by order to provide for the “designated day”. That day is to fall not less than 6 months after the order is made. The designated day is the day on which the main provisions of the Act, listed in section 123(2), will come into force.

Sections 123: Commencement

262. This section is self-explanatory.

Sections 124: Short title

263. This section is self-explanatory.