

LAND REGISTRATION ETC. (SCOTLAND) BILL

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these revised Explanatory Notes are published to accompany the Land Registration etc. (Scotland) Bill (introduced in the Scottish Parliament on 1 December 2011) as amended at Stage 2. Text has been added as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. Therefore, where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

4. The Land Registration etc. (Scotland) Bill makes provision for land registration in Scotland and provides a new legislative basis for the Land Register. The Bill also increases the number of events that will trigger the transfer of property from the existing General Register of Sasines to the Land Register. This will ensure the eventual completion of the Land Register. The Bill makes provision for applications for voluntary registration of titles in the Land Register and a power for the Keeper of the Registers of Scotland (who manages and controls the Land Register) to register a title without an application (a "Keeper-induced" registration). The Bill seeks to re-align registration law with property law by, for example, adjusting the circumstances in which a person can recover their property rather than only receive compensation under the state guarantee of title from the Keeper of the Registers.

5. In addition to these matters affecting the Land Register, the Bill introduces a system of "advance notices" for conveyancing transactions. The period between delivery and registration of a deed disposing an interest in land is the period in which the grantee of the deed (normally the purchaser) is at risk. The two main risks that a purchaser in a conveyancing transaction is exposed to are (1) the insolvency of the grantor of the deed (the seller), and (2) that a competing deed will be registered before that deed. This risk is currently underwritten by insurance.

Finally, the Bill introduces amendments to the Requirements of Writing (Scotland) Act 1995, which will allow Scottish Ministers to make subordinate legislation enabling electronic conveyancing and electronic registration.

6. In 2002, the Keeper, with the agreement of Scottish Ministers, invited the Scottish Law Commission ("the SLC") to review the law of land registration in Scotland. The SLC issued three discussion papers. The first was a Discussion Paper entitled *Land Registration: Void and Voidable Titles* (Scots Law Com DP No 125, 2004), the second was a Discussion Paper on *Land Registration: Registration, Rectification and Indemnity* (Scot Law Com DP No 128, 2005) and the third was a Discussion Paper on *Land Registration: Miscellaneous Issues* (Scot Law Com DP No 130, 2005). The SLC project culminated in the publication of its Final Report on Land Registration (Scot Law Com No 222), including a draft Land Registration (Scotland) Bill, in February 2010. The SLC report and draft Bill provides useful explanatory background. However, there are a number of differences of detail between the Bill as introduced and the SLC draft Bill.

OVERVIEW OF THE BILL

7. The Bill as a whole continues and improves the system for land registration in Scotland. It replaces much of the Land Registration (Scotland) Act 1979.

8. Part 1 of the Bill provides the new structure of the Land Register of Scotland.

9. Part 2 of the Bill provides for the process of registration in the Land Register, including the processes for the additional "triggers" for first registration of titles. A "first registration" is the processing of an application relating to land which is not on the Land Register, the completion of which results in a land registered title. These additional triggers will facilitate the eventual completion of the Land Register.

10. Part 3 of the Bill provides for which documents may be registered in the Land Register and makes provision about the competence and effect of registration.

11. Part 4 of the Bill makes provision for advance notices

12. Part 5 of the Bill makes provision about inaccuracy in the Land Register. This is closely linked to Part 8 below.

13. Part 6 of the Bill makes provision about caveats in the Land Register.

14. Part 7 of the Bill makes provision for state guarantee of title under the Keeper's warranty.

15. Part 8 of the Bill is closely linked to Part 5 on inaccuracy of the Register. It provides for when and how the Land Register is to be rectified to correct inaccuracy.

16. Part 9 of the Bill makes provision about rights of persons acquiring subjects in good faith in certain circumstances.

17. Part 10 of the Bill makes provision about electronic documents (including electronic conveyancing) and electronic registration.
18. Part 11 of the Bill makes general and miscellaneous provision, including a power of Scottish Ministers to set fees for processing applications and a power to make the Land Register rules
19. Schedule 1 to the Bill relates to registered leases tenanted in common.
20. Schedule 2 to the Bill contains amendments to the Registration of Leases (Scotland) Act 1857.
21. Schedule 3 to the Bill contains consequential amendments to changes to the Requirements of Writing (Scotland) Act 1995 ("the 1995 Act") in Part 10.
22. Schedule 4 to the Bill contains savings and transitional provision.
23. Schedule 5 to the Bill contains minor and consequential modifications.

PART 1: THE LAND REGISTER

Overview of Part 1

24. Part 1 of the Bill provides for the continuation of the Land Register and sets out what the component parts of the register are. It also makes provision for how the Land Register is to deal with common areas, both within tenements and in other places where property is shared (such as gardens and driveways).

The Land Register of Scotland

Section 1: The Land Register of Scotland

25. The section sets out the underlying legal basis for the Land Register in Scotland. Subsection (1) makes in plain that the register is a public register of rights in land. The equivalent 1979 Act provided for the Land Register to be a register of interests in land. This is not a substantive change, merely a change of emphasis.

26. Subsection (4) gives the Keeper of the Registers authority and flexibility as to the form of the Land Register. In particular, it allows the Land Register to be in electronic form.

27. Subsection (5) makes it clear that it is the Keeper's responsibility to ensure that the Land Register is sufficiently protected, due to the significant implications that would result from problems with it.

Structure and contents of the register

Section 2: The parts of the register

28. This section provides for the constituent parts of the Land Register. The details relating to each part are provided for in the following sections. It is noteworthy that the formal parts of the Land Register are expanded to include the cadastral map, the archive record and the application record. These parts of the Land Register previously existed on an administrative basis only. Section 6 of the Land Registration (Scotland) Act 1979 made provision with regards to title sheets, but did not mention the title sheet record.

Title sheets and the title sheet record

Section 3: Title sheets and the title sheet record

29. Subsections (1) and (6) together establish a key principle that each registered plot of land has a title sheet and there is only one title sheet for each plot. This is however subject to exceptions in subsections (2) and (7)

30. Subsection (4) defines “plot of land” as an area or areas of land all of which are owned by one person or jointly by more than one person. A separate tenement, such as mineral rights, or a flat in a tenement building, is a plot of land for these purposes under subsection (5).

31. Subsection (2) allows the Keeper to continue the current practice of creating a title sheet for a registered lease. This means there may be more than one title sheet for a plot of land where all or part of the plot is leased. Lease title sheets are subsidiary to title sheets made up under subsection (1) of this section.

32. In the case of the exception for pertinents, subsection (7) allows exclusive pertinents (such as gardens, garages and bin-stores) to be included in the same title sheet as the main part of the land being registered. Where a pertinent is in common ownership, a shared plot title sheet may be created instead (see sections 17 to 20).

Section 4: Title and lease title numbers

33. This section is self-explanatory.

Section 5: Structure of title sheets

34. Subsection (1) of this section provides for the sections of a title sheet. This replicates the sections of the title sheets as they appear in existing title sheets. Statutory provision with regards to title sheets was made in section 6 of the Land Registration (Scotland) Act 1979 and in the Land Registration (Scotland) Rules 2006.

35. Subsection (2) contains a power of the Keeper to sub-divide sections of the title sheet, which would enable, for example, the proprietorship section of a title sheet to be divided to reflect the provisional ownership of a prescriptive claimant (see section 42) in one part and the underlying ownership of another person in the other part.

Section 6: The property section of the title sheet

36. This section sets out what has to be included in the property section of the title sheet. It is commonly known as the “A section”. The property section sets out what the registered property is. Subsection (1)(a)(i) requires the description of the plot of land to be a description by reference to the cadastral map. This reflects the importance of the cadastral map in the Land Register under the Bill in showing the registered boundaries of plots of land.

37. Subsection (1)(b) requires the particulars of incorporeal pertinents (such as servitudes) to be entered onto the property section.

38. Subsection (1)(c) requires alluvion agreements (made under section 63) to be entered on the property section.

39. Where the title sheet is for a sharing plot (see sections 17 to 19) or a sharing lease (see section 20 and schedule 1), subsection (1)(d) requires the property section of the title sheet to specify what the share in the shared plot or shared lease area is.

40. Subsection (1)(f) requires in the case of title sheets that relate to the same area of land (such as where both an ordinary title sheet and lease title sheet or salmon fishing title sheet exists), that the property section of each title sheet provide a cross-reference to any other title sheet.

Section 7: The proprietorship section of the title sheet

41. This section of the title sheet will set out who owns the property described in the property section and their respective shares (for common ownership). This section is commonly known as the “B” section.

42. For the purposes of subsection (1)(a), the “designation” of the proprietor is defined in section 109(1).

43. Subsection (2) provides for exceptions to these requirements in the case of shared plot and shared lease area title sheets (see section 17 and schedule 1), and for title sheets which show areas in common which were already included in two or more title sheets before the designated day. Also relevant to the effect of subsection (2) is:

- Where the title sheet is a shared plot or shared lease area title sheet, the plot numbers of the sharing plot are to be entered to make the link. The quantum of the shares (i.e. the share of the whole) in the shared plots must be entered (see section 18(2)(a) and paragraph 7(a) of schedule 1);
- For title sheets created before the commencement of the Bill, where (1) common areas were entered on more than one title sheet and the Keeper makes a shared plot or shared lease area title sheet, and (2) the quantum of shares were not entered on the existing title sheets, the respective shares of the common owner don't have to be entered on the new shared plot or shared lease area title sheet (see paragraph 9 of schedule 4).

- Where the title sheet is for a flat in a tenement or other single flatted building and the Keeper has mapped the tenement (or flatted building) as provided for in section 16, the Keeper need not enter the respective shares (such as the common close).

Section 8: The securities section of the title sheet

44. Subsection (1) sets out the information that the Keeper must enter in the securities section of a title sheet. It is commonly known as the “C” or charges section.

45. Subsection (2) makes reference to provisions on shared plot and shared lease title sheets which make specific provision about the securities section of those title sheets.

Section 9: The burdens section of the title sheet

46. Subsection (1) sets out the information that the Keeper must enter in the burdens section of a title sheet in respect of the property. It is commonly known as the “D” section.

47. Certain burdens (such as short leases i.e. those lasting 20 years or less) are not capable of registration and so will not appear in the burdens section.

48. Subsection (3) allows the Keeper to omit burdens from a shared plot title sheet (or a shared lease area title sheet) where the burden is disclosed in the title sheets of each of the sharing plots anyway.

Section 10: What is entered or incorporated by reference in a title sheet

49. Subsection (2) sets out the additional matters that the Keeper must enter on a title sheet and includes a general duty to include such information as the Keeper considers appropriate. This might be used, for example, to enter statements on a title sheet about the existence of a real burden subsisting by virtue of any of sections 52 to 56 of the Title Conditions (Scotland) Act 2003 (various implied rights of enforcement) or section 60 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (preserved right of Crown to maritime burdens).

50. Subsections (4) and (5) make it clear that the information entered cannot contain any rights or obligations not authorised by law, and if rights or obligations are so entered, their entry has no effect. Therefore, should a right and obligation appear on a title sheet when it is not authorised by law, or the entry relates to a right or obligation, which is merely a personal right, their entry is of no effect and does not constitute notification of the right to any party searching the Land Register.

51. Subsection (3) allows the Keeper to incorporate into the title sheet additional documents by reference. This includes documents in the archive record, such as supplementary plans or deeds registered in other registers the Keeper manages and controls (such as deeds in the General Registers of Sasines, the Register of Inhibitions or the Books of Council and Session).

52. Subsections (2)(b) and (6) mean that while particulars of special destinations can be entered on title sheets generally, they cannot be entered on shared plot title sheets or shared lease title sheets.

The cadastral map

Section 11: The cadastral map

53. This section provides detail on the content of the cadastral map. The cadastral map is a map of registered land rights in Scotland. Its constituent parts are cadastral units (see section 12).

54. Subsection (1) of section 11 provides that the entry on the cadastral map for a cadastral unit is a data set that will show the boundaries of the cadastral unit. The description of the property as set out in the property section of the title sheet will make reference to the cadastral unit number.

55. Subsection (3) permits, but does not compel, three-dimensional mapping.

56. Subsections (5) and (6) make provision for the base map, on which the cadastral map is to be based. The default base map is to be the Ordnance Map maintained by the Ordnance Survey. The Keeper may use a different system of mapping the base map if appropriate in the future (it may be appropriate to do so for areas of the seabed where there is no entry on the Ordnance Map).

57. Subsection (7) allows the Keeper to make consequential changes to the Land Register when the base map is updated. In practice, this means that where the Ordnance Map is improved, the boundaries of cadastral units can be adjusted as long as the adjustment falls within the tolerances of the base map.

58. Subsection (9) is a marker to note that there is an exception to the general rules on mapping in the cadastral map in section 16 for tenements and other flatted buildings.

Section 12: Cadastral units

59. This section provides that each numbered cadastral unit represents a registered plot of land.

60. Subsection (3) provides for an exception that a pertinent can be included in the same cadastral unit as the land to which it pertains.

61. The consequence of subsection (2) is that entries on the cadastral map, other than entries for separate tenements, and in transitional cases, cannot overlap.

Section 13: The cadastral map: further provision

62. Section 11(6) allows the Keeper to use a different system of mapping as the base map (or for part of the base map) for the cadastral map if appropriate. Section 13(1) recognises that the

Ordnance Map does not extend to the seabed. The combination of section 11(6) and subsection (1) allows the Keeper to map seabed titles (such as long leases for renewable energy projects) as the Keeper thinks fit. In practice, this will allow seabed titles to be represented on the cadastral map either by a dataset of co-ordinates or by mapping on a system of mapping other than the Ordnance Map.

63. Subsections (2) to (4) contain important powers for the Keeper to manage the cadastral map by dividing, removing and combining cadastral units. On doing so, the Keeper would be required by the combination of sections 3 and 12 to rationalise the title sheets that correspond to the cadastral units, and subject to transitional arrangements.

The archive record

Section 14: The archive record

64. This section provides for the archive record to be the repository of documents supporting the accuracy of the Land Register.

65. Under subsection (3), the archive record need not include copies of legislation (which is otherwise publicly available), documents contained in other registers that are controlled by the Keeper of the Registers of Scotland, or documents stored by the Keeper of the Records of Scotland.

66. Subsection (4) ensures that although the archive record becomes a constituent part of the register, parties relying on the title sheet record are not considered to have constructive knowledge of its content. This preserves the so-called "curtain principle" of not having to look behind the face of the register.

The application record

Section 15: The application record

67. This section makes provision about the application record. The application record is essentially the Keeper's "in tray" of pending applications the Keeper is to consider. Advance notices (see Part 4) for registered plots of land will be entered in the application record.

Tenements etc.

Section 16: Tenements and other flatted buildings

68. Titles to tenement flats are particularly difficult to map. Typically, tenement properties are conveyed by reference to a verbal description of the individual flat. They are seldom mapped. Subsection (1) allows the Keeper to continue to use the approach of depicting a tenement as a site of single extent on the cadastral map. The power is also extended to single-storey building with internal divisions, where the same issue applies. In practice, this means the cadastral unit for each plot of land in the tenement is the whole tenement (although each flat will have its own title sheet).

69. Subsection (2)(b) makes provision for how pertinents of the flats in tenements are to be treated.

70. Subsection (3) creates a rule that disapplies subsections (1) and (2) in respect of land pertaining to the tenement or flatted building that is further than 25 metres from the "flatted building" as defined in subsection (4). Where a shared pertinent is not further than 25 metres from the tenement building, the Keeper is allowed to include the pertinent in the site of single extent. Where a shared pertinent extends further than 25 metres from the tenement building, a shared plot title sheet will require to be created for the pertinent (see section 17). Where a pertinent is an exclusive pertinent to one flat in the tenement, that pertinent will be able to be included as a discontinuous site on the cadastral map with the same cadastral unit as the tenement building whether or not it extends beyond 25 metres from the building.

Shared plots

Section 17: Shared plots

71. This section and the following three sections provide for a scheme to define common areas and give them standalone title sheets. These common areas, such as driveways, shared gardens, amenity areas and bin stores often currently appear in more than one title sheet, meaning that when viewing the cadastral map it is unclear who the owners of the area of land are.

72. Subsection (2) gives a power to the Keeper to make up a shared plot title sheet. There is no duty to do so.

73. Subsection (3) provides for the relationship between a "shared plot" and a "sharing plot".

74. Subsection (5) makes special provision that, unless the deed provides otherwise, a deed affecting a sharing plot will similarly affect the relevant share in the shared plot. Subsection (4) makes this reference apply to all other documents (the most important of which is missives).

Section 18: Shared plot and sharing plot title sheets

75. Subsections (1) to (3) set out what is to be included and what is not to be included in a shared plot title sheet and a sharing plot title sheet. Subsection (1) in particular shows the biggest difference between a shared and sharing plot title sheet and an ordinary title sheet. It provides that the sharing plot title sheet will include the title number of the shared plot title sheet in the property section and that the title number of the sharing plot title sheet will appear in the proprietorship section of the shared plot title sheet. This means that where a sharing plot is sold, no change is required to the shared plot title sheet. This is because the sale of the sharing plot will result in a change to the property section of that title sheet but its title number will remain the same.

Section 19: Conversion of shared plot title sheet to ordinary title sheet

76. This section provides that a shared plot title sheet can be converted into an ordinary title sheet. This might happen if one of the sharing plot owners buys up the other owners' interests in the shared plot.

Section 20: Shared plot title sheets in relation to registered leases

77. This section introduces schedule 1 to the Bill, which makes equivalent provision for shared lease area title sheets. These title sheets correspond to shared plot title sheets but relate to shared lease interests rather than shared ownership interests.

PART 2: REGISTRATION

Overview of Part 2

78. Part 2 of the Bill provides for the process of registration in the Land Register.

79. This Part also makes provision for the three elements that will ensure the eventual realisation of a completed Land Register. These are the additional “triggers” for first registration of titles, voluntary registration and Keeper-induced registration. A “first registration” is the processing of an application relating to land which is not already on the Land Register, the completion of which results in a land registered title.

80. There is no explicit reference in the Bill to the additional triggers for first registration. Instead, the effect comes from the general effect of the Bill and the closure of the General Register of Sasines to the recording of various deeds as provided for in section 47. The first closure step provided for in section 47 is the closure of the General Register of Sasines to transfer deeds. The consequence is that if someone wishes to transact with property registered in the General Register of Sasines and therefore to transfer ownership rights, the only way this can be done is by registering the disposition transferring ownership in the Land Register.

Applications for registration

Section 21: Application for registration of deed

81. This section provides the basic assumptions about applications for registration in the Land Register: that a person can apply for registration of a registrable deed; and that if the application complies with the applicable conditions, the Keeper must accept the application. Provision is also made that if the application does not comply with the applicable conditions, the Keeper has to reject the application.

82. Subsection (4) provides that where an owner of land objects under section 44(5) to their land being subject to a prescriptive claim (see sections 42 to 44 for prescriptive claimants, who do not own the property they are seeking to register), and who does so within 60 days of notice of the prescriptive claim, the application by the prescriptive claimant falls to be rejected.

Section 22: General application conditions

83. This section sets out the general conditions with which all applications have to comply. Section 4 of the Land Registration (Scotland) Act 1979 made only minimal provision for applications for registration.

84. Subsection (1)(a) is a requirement that the application allows the Keeper to comply with the Keeper’s duties under Part 1. The main duties in question are:

- the duties under sections 6 to 9 to enter what those sections provide for into the relevant sections of a title sheet; and
- the duty in section 14(1) to include copies of relevant documents in the archive record in relation to the application.

85. Subsections (1)(b) and (2) prevent any application that relates to a so-called “souvenir plot” (that is, a plot that is very small and of no practical use to anyone) from being accepted.

86. The effect of subsection (1)(c) is that where subordinate legislation (made under section 9G of the Requirements of Writing (Scotland) Act 1995 as inserted by section 93) sets out requirements as to the type of document and level of authentication required for registration of an electronic document, an application for registration has to comply with the terms of the relevant subordinate legislation to be accepted. Traditional documents are required to comply with the rules already in section 6 of the 1995 Act.

87. Subsection (1)(d) provides that an application must comply with requirements as to form that are specified in the Land Register rules (see section 111).

Section 23: Conditions of registration: transfer of unregistered plot

88. This section provides the special conditions for what is known as an application for “first registration”. A first registration is where an unregistered property is taken into the Land Register for the first time. By virtue of the closure of the General Register of Sasines to the recording of deeds relating to registered land under section 47(1) and the closure of the Register of Sasines to dispositions under 47(2), first registration will be induced not only when there is a transaction for value (which is the existing law, replaced by the Bill), but for all transfers.

89. Subsection (1) provides for the additional conditions that apply to a first registration. Subsection (1)(c) requires the application to include information to enable the Keeper make an accurate entry on the cadastral map in relation to the cadastral unit created as a consequence of an accepted application.

90. Subsection (2) provides an exception to these conditions for flats in tenements where the Keeper chooses, under section 16, to represent the tenement as a site of single extent.

91. Subsection (3) is an exception to the exception in subsection (2) and requires any exclusive pertinent of the plot of land, such as a coal cellar or parking space pertaining to one of the flats, to be sufficiently described (because the pertinent would still need to be mapped by the Keeper).

92. Subsection (4) clarifies that the applicant is not required to provide a plan or description of certain servitudes affecting the plot such as pipeline servitudes (subsection (4)(a)) or servitudes created other than by registration, e.g. by prescription (subsection 4(b)).

Sections 24 and 25: Conditions of registration: certain deeds relating to unregistered plots

93. These sections make provision for the circumstances in which, as a consequence of an application for registration of a subordinate real right (such as an assignation of an unregistered lease), a first registration of the underlying land must take place. There will be additional applications of these types by virtue of the closure of the General Register of Sasines under section 47.

94. Section 24 sets out the type of applications in relation to which the conditions in section 25 apply on first registration of the underlying unregistered land. They are:

- on an application for registration of a lease over the land;
- on an application for registration of an assignation of a lease over the land;
- on an application for registration of a sublease over the land;
- on an application for registration of a standard security over the land;
- on an application for registration of a notice of title to a subordinate real right in relation to the land; and
- on an application for registration of a standard security over an unregistered, subordinate real right in relation to the land.

95. Section 25 sets out the additional conditions for the registration of the deeds referred to in section 24.

Section 26: Conditions of registration: deeds relating to registered plots

96. This section provides special provisions for applications relating to plots of land already registered in the Land Register. The main types of such application are a transfer of the whole of a plot (commonly known as a “dealing with whole”), a transfer of part of a plot (known as a “transfer of part”) and the registration of a standard security (usually a mortgage). Transfers of part are most commonly associated with new-build developments. This section applies to all deeds that relate to registered plots of land.

97. Subsection (1)(d) provides a special rule for transfers of part, that the part of the plot which is being transferred has to be sufficiently described to allow the Keeper to accurately map the boundaries of the new plot in the cadastral map. Subsection (3) provides that this mapping rule does not apply to tenements mapped as a site of single extent under section 16. Subsection (4) provides however that exclusive pertinents of plots do still need to be mapped. This is the same arrangement as in section 23 for first registration.

Registration without deed

Section 27: Application for voluntary registration

98. This section provides the scheme for applications for voluntary registration of plots of land or parts of plots to be registered. This is a form of first registration. However, since the applicant will already own the land, there will be no transfer of rights as a result of an accepted application.

99. Subsection (3)(b) gives the Keeper a power to decline to accept an application on the ground of expediency. This broadly replicates the provision in section 2(1)(b) of the Land Registration (Scotland) Act 1979. Subsection (6) allows Scottish Ministers to remove that power by order.

Section 28: Conditions of registration: voluntary registration

100. This section provides the special provisions for voluntary registration applications. These are similar to the conditions in section 25.

Section 29: Keeper-induced registration

101. This section gives the Keeper the ability to register land without application and without the consent of the owner of that land. Registration under this section would not affect the property title of the owner of the property but the Keeper can grant warranty over the land under section 71.

Completion of registration

Section 30: Completion of registration of plot

102. This section draws together the duties of the Keeper in relation to registration on acceptance of an application for first registration, voluntary registration or in relation to a Keeper-induced registration. Subsection (2) lists the practical duties the Keeper must perform to complete registration of a plot of land in the Land Register for the first time.

Section 31: Completion of registration of deed

103. This section provides the duties of the Keeper on acceptance of an application for registration of a deed by virtue of section 26. These provisions are not applicable to cases in which the plot of land has to be registered too. The most common instances of registrations under this section will be transfers of the whole of a plot, a transfer of part of a plot and registrations of a standard security.

Section 31A: References to certain entries in Register of Inhibition

104. This section makes provision for what the Keeper must do when an application to register a deed has been accepted but the validity of the deed may be affected by an entry in the Register of Inhibitions. In these circumstances, after the Keeper has accepted the application, a reference to the entry in the Registers of Inhibitions must be entered in the title sheet. Subsection (3) provides two exceptions: (a) for notices of land attachments and (b) for notices of actions of reduction (used to enforce inhibitions). This is because other enactments already provide for these notices to enter the Land Register by registration.

General provision about applications

Section 32: Recording in application record

105. Subsection (1) recognises that the Land Register closes at the end of each business day and that where applications for registration are made after the register has closed for the day, the effective date of application will be the next day that the application record opens.

Section 33: Withdrawal and amendments etc. of application

106. This section provides for the so-called “one-shot principle”, that an application cannot be supplemented or substituted after the date of application unless the Keeper consents. Detailed provision can be made in the Land Register rules for that consent.

Section 34: Period within which decision must be made

107. This section allows Scottish Ministers to set turn-around times for the Keeper to deal with applications in the Land Register rules.

Date of application and registration etc.

Section 35: Date of application

108. This section provides that the formal date of application is always the date of the entry in the application record in respect of the application (whether or not the application was made earlier). This section ties in with section 32.

Section 36: Date and time of registration

109. This section provides that the formal date of registration is always backdated to the end of the date of application under section 35. The Scottish Ministers can make different provision by order.

Section 37: Power to amend section 6 of the Land Registers (Scotland) Act 1868

110. This section is self-explanatory.

Applications in relation to the same land

Section 38: Order in which applications are to be dealt with

111. This section is self-explanatory and makes detailed provision for the scenario in which competing applications are received by the Keeper. Subsection (2) clarifies that the order of receipt is to be taken to be the order details of the applications are entered in the application record. The provisions in sections 57 (Period of effect of advance notice) and section 58 (Effect of advance notice) are also relevant to this section.

Notification

Section 39: Notification of acceptance, rejection or withdrawal of application

112. Subsection (1) requires the Keeper, on acceptance or rejection of an application, to notify at least the applicant and any grantor of a deed to be registered.

113. Subsection (2) requires the Keeper, on an application for registration being withdrawn, to notify certain parties.

114. Subsection (3) provides that the duty on the Keeper in subsections (1) and (2) does not need to be carried out when it is not reasonably practicable to do so.

Section 40: Notification to proprietor

115. This section provides for notification to the proprietor in two cases. First, where there is an application for a first registration of a plot of land under sections 21 and 25 as a result of an application for registration of a subordinate real right on the land. The second case is where the Keeper has performed a Keeper-induced registration under section 29. In both cases, the owner of the land may be unaware that the plot of land has been registered in the Land Register.

116. Subsection (3) provides that the duty on the Keeper in subsections (1) and (2) does not need to be carried out when it is not reasonably practicable to do so.

Section 41: Notification to Scottish Ministers of certain applications

117. This section requires the Keeper to notify the Scottish Ministers when an application for registration is rejected on the grounds that it relates to a transfer that is prohibited by the Land Reform (Scotland) Act 2003 in relation to community interests in land.

Prescriptive claimants etc.

Overview of sections 42 to 44: prescriptive claimants

118. Sections 42 to 44 provide for the process whereby a person can apply for title to land to be constituted by prescription. The process for this is for an application to be made for registration of what is known as an *a non domino* disposition in relation to the area of land. The sections provide for the process by which a “prescriptive claimant” can apply to the Keeper to obtain a provisional title in the Land Register. The 10-year prescriptive period provided for by section 1(1) of the Prescription and Limitation (Scotland) Act 1973 can begin to run. If the 10-year period elapses without interruption (for example, such interruption could be by virtue of a challenge from the true owner of the land), the Keeper is to remove the provisional marking from the relevant entry in the title sheet.

Section 42: Prescriptive claimants

119. Subsection (1) provides that for the purposes of becoming a prescriptive claimant, the disposition granted in favour of the prescriptive claimant can be treated as valid so that the conditions of registration in sections 23 and 26 can be met.

120. Subsection (2) clarifies that this section is applicable to a disposition that is not granted by the person with the title to the subjects being granted.

121. Subsection (3) provides the first limb of the requirements for a person to become a prescriptive claimant. The applicant must satisfy the Keeper that the land that is sought to be acquired has been possessed by the disponent or the prescriptive claimant for one year immediately preceding the date of application. The prescriptive claimant will require to submit relevant evidence to the Keeper to satisfy this requirement. Subsection (8) allows Scottish Ministers to substitute a different time period for that provided for in subsection (3).

122. Subsection (4) provides the second limb of the requirements. To make a valid application, the applicant must satisfy the Keeper that they have taken reasonable steps to trace the true owner of the land, or any party able to complete title as true owner and that they have been notified. Where no-one appears to own the land, sub-paragraph (c) requires the applicant to notify the Crown as it is the ultimate heir to land in Scotland and abandoned property and the assets of a dissolved juristic person may also fall to the Crown as a matter of law. Subsection (7) contains a power to make further provision in Land Register rules regarding notification to various parties. This will allow the Land Register rules to make further provision with regards to the detail of the notification, how it is to be done and the information it should contain.

123. Subsection (5) is relevant to a title that has been provisionally registered in favour of a prescriptive claimant. It clarifies that a prescriptive claimant is able to dispose such a title.

Section 43: Provisional entries on title sheet

124. This section provides that while a person is a prescriptive claimant, entries relating to the rights they would acquire were the prescriptive period to run successfully are to be marked as provisional. This section deals with both first registrations and dealings with whole of registered plots where there is already a prescriptive claimant.

125. Subsection (2) provides that when the requirements in section 1 of Prescription and Limitation (Scotland) Act 1973 have been met, the person's title is no longer provisional as they have become the true owner of the land in question. Accordingly, the Keeper is to remove the provisional marking.

126. Subsection (3) ensures that provisional markings on title sheets confer no real property rights.

127. Where a prescriptive claimant's name is entered on the proprietorship section of a title sheet and the Keeper knows who the underlying owner of the land is, the Keeper can, by virtue of section 10(2)(e), enter the underlying owner's name as well as the prescriptive claimant's.

Section 44: Notification of prescriptive applications

128. This section provides for further notification to the underlying true owner of property in advance of the acceptance of an application to become a prescriptive claimant. This extends the procedure in section 14 of the Land Registration (Scotland) Act 1979 that provided for the Keeper to notify the Crown Estate Commissioners of applications of foreshore subjects.

Subsection (1) requires the underlying owner (who may be the Crown) to be notified by the Keeper. Such notification only requires to be done in the instance when there is not already a prescriptive claim to the title in question.

129. Subsection (2) provides that the duty on the Keeper in subsection (1) does not need to be carried out when it is not reasonably practicable to do so.

130. Subsections (4) and (5) ensure the underlying owner is given 60 days to veto an application for a person to become a prescriptive claimant over their land.

Further provision

Section 45: Applications relating to compulsory acquisition

131. This section makes provision for conveyances as provided for by enactment, notarial instruments and general vesting declarations to be treated as dispositions for the purposes of sections 21, 23, 30 and 47.

Section 46: Effect of death or dissolution

132. This section provides that an application falls to be rejected if the applicant dies (or if a legal person such as a company is dissolved) before the application date under section 35, but can be accepted if the applicant dies or is dissolved while the Keeper's decision as to whether to accept or reject the application is pending.

Section 47: Closure of Register of Sasines etc.

133. This section provides for the phased closure of the General Register of Sasines.

134. Subsection (1)(a) provides that the recording of a disposition in the General Register of Sasines will cease to be effective. In practice, this will mean that in order for ownership to transfer, the disposition will require to be registered in the Land Register. Subsection (1)(a) is subject to the special case of title conditions. It may be necessary to record a disposition in the General Register of Sasines to meet the requirement of "dual registration" as provided for in section 4 of the Title Conditions (Scotland) Act 2003 (the 2003 Act) in respect of real burdens or in section 75 of the 2003 Act in respect of servitudes. This special case is set out in subsection (6). Subsection (1)(d) provides that once a plot of land is registered in the Land Register, nothing in relation to that land can be recorded in the General Register of Sasines.

135. Subsections 1(b) and (c) provide that leases, ("lease" is defined as including sub-lease in section 109(1)) and assignments of leases cannot be recorded in the General Register of Sasines. This will induce first registration in the Land Register of the underlying plot of land.

136. Subsection (2) provides a power for the Scottish Ministers by order to close the General Register of Sasines to standard securities. This would mean a property would need to be registered in the Land Register before a new standard security could be registered, allowing the creditor to obtain a real right.

137. Subsections (3) and (4) provide a similar power to close the General Register of Sasines completely and a corresponding power to register any deeds that could be recorded in that register in the Land Register instead.

138. Subsection (9) allows an order closing the General Register of Sasines under subsections (2) or (3) to apply on an area-by-area basis.

139. Subsection (10) provides that, before an order is made under subsection (2) or (3), the Scottish Ministers must consult the Keeper and any other persons that appear to have an interest in the closure of the Register of Sasines to the recording of deeds.

PART 3: COMPETENCE AND EFFECT OF REGISTRATION

Overview of Part 3

140. Part 3 of the Bill provides for which documents can be registered in the Land Register and what the effect of such registration will be.

Registrable deeds

Section 48: Registrable deeds

141. Subsection (1) provides for what documents can be registered in the Land Register. These are documents which any Act provides can be registered. The most common types of registrable documents are:

- dispositions (see section 49);
- standard securities (under section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970);
- long leases (under section 1 and 20A of the Registration of Leases (Scotland) Act 1857 – section 20A as inserted by section 51);
- notices of title (under section 4A of the Conveyancing (Scotland) Act 1924 (as inserted by section 52(3)));
- decree of reduction (under section 46A(1) of the Conveyancing (Scotland) Act 1924 as inserted by section 53);
- an arbitral award which orders the reduction of a deed (under section 46A of the Conveyancing (Scotland) Act 1924 as inserted by section 53);
- an order for rectification of a document (under section 8A of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 as inserted by section 54(3));
- a standard security ranking agreement (under section 13(4) of the Conveyancing and Feudal Reform (Scotland) Act 1970 as inserted by paragraph 17(7)(c) of schedule 5);
- a deed creating a proper liferent (see section 50); and
- deeds registrable in the Land Register under section 47(7) following the closure of the General Register of Sasines under section 47(6).

Specific provisions on competence and effect of registration

Section 49: Transfer by disposition

142. Subsection (2) continues the important principle that a real right in ownership can only transfer when a valid disposition is registered.

143. Subsection (4)(a) makes subsections (1) to (3) subject to provisions in the Bill on prescriptive claimants and persons acquiring in good faith from a person with invalid title. Subsection (4)(b) makes subsections (1) to (3) subject to any other enactment or rule of law under which ownership may pass. The most significant of these is transfer of ownership by operation of a survivorship destination contained in a disposition.

144. Subsection (5) makes it clear that this section covers udal land (which exists in Orkney and Shetland).

Section 50: Proper liferents

145. This section continues the principle that proper liferents (which allow a person to live in a property until their death) must be registered in either the Land Register or the General Register of Sasines to have real effect as a matter of property law.

Section 51: Registration of, and of transactions and events affecting, leases

146. This section inserts two sections into the Registration of Leases (Scotland) Act 1857. Inserted section 20A allows deeds affecting existing long leases to be registered in the Land Register (new long leases are registrable under section 1 of that Act). Inserted section 20B provides that the registered deed has real effect. Schedule 2 makes further related amendments.

Section 52: Completion of title

147. This section amends the Conveyancing (Scotland) Act 1924 to allow people to use a notice of title to complete an uncompleted title. Under current law, the use of a notice of title is only permitted in the General Register of Sasines.

148. Subsections (2) and (3) provide that an unregistered proprietor of an unregistered property has a choice of methods of completing title. That person is either to record a notice of title in the General Register of Sasines or register a notice of title in the Land Register. The exception to this rule is that where the last recorded title is not in the General Register of Sasines (for example if the property is in a Burgh Register of Sasines or is a pre-1617 title), the effect of subsection (2)(a) is that the option of recording a notice of title in the General Register of Sasines does not apply and the notice must be registered in the Land Register.

149. Subsection (4) is a power to prescribe the forms in relation to completion of title by order. Subsection (5) provides, for Land Register cases, a simplified style of notice (the statutory styles for use in the General Register of Sasines are not altered).

Section 53: Registration of decree of reduction

150. This section inserts a new section 46A into the Conveyancing (Scotland) Act 1924, the effect of which will be that where a voidable deed is reduced, the decree does not immediately change real rights that have been entered in the Land Register. Instead, section 46A(1)(b) provides that the decree has effect on those rights when it is registered in the Land Register. The real rights of the parties concerned thus only change as of the date of the registration of the decree.

151. Subsection (3) ensures that an arbitral award ordering reduction of a deed and made under the Arbitration (Scotland) Act 2010 can where appropriate have equivalent effect as is provided for a decree of reduction under subsection (1).

Section 54: Registration of order for rectification of document etc.

152. Judicial rectification of a document under section 8 of the Law Reform (Miscellaneous Provisions) Scotland Act 1985 operates retrospectively where a court is satisfied that a document failed to give effect to the common intention of the parties. Section 3 of the 1985 Act allows the court to rectify any subsequent document that is defectively expressed by virtue of the defect in the original document. Subsection (2)(a) inserts a new subsection (3A) into section 8 to provide that, where any such subsequent document is registered in the Land Register in favour of a third party who is in good faith, judicial rectification of that document can only happen where the third party consents to the rectification.

153. Subsection (3) inserts a new section 8A which provides that an order for rectification under section 8 of a document registered in the Land Register will have no real effect until the order itself is registered. When it is so registered, it has effect at that point, rather than applying retrospectively to, for example, the date of the making of the order.

PART 4: ADVANCE NOTICES

Overview of Advance notices

154. The first sections in Part 4 provide for a system of advance notices that protects the grantee of a deed during the time between taking delivery of the deed (in exchange for the money) and the registration of that deed. This period is known as the "gap risk" as the grantee is vulnerable in this period to the registration of competing deeds or sequestration of the granter of the deed. The entry of an advance notice referring to a registrable deed ensures that during the next 35 days no disposition or competing advance notice can beat that deed in any race to the register.

155. The following examples of the way in which advance notices are intended to operate in the case of registered titles draw on the examples in schedule 3 to the draft Bill in volume 2 of the final SLC Report. They are provided for illustrative purposes and are no substitute for full consideration of the Bill:

Example 1:

Circumstances:

- X, who is the owner of Blackmains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a disposition of the property to Y but also a disposition of it to Z.
- On 8th May, Z's disposition is registered in the Land Register.
- On 15th May, Y applies for registration in the Land Register.

Consequences:

- The Keeper accepts Y's application and on registering Y's disposition replaces Z's name by Y's in the Land Register. Y becomes registered proprietor of the property with effect from 15th May.

Example 2:

Circumstances:

- The same as in example 1 except that Y does not apply for registration in the Land Register while the protected period is running.

Consequence:

- Y's application is rejected.

Example 3:

Circumstances:

- X, who is the owner of Scarletmains, grants on 1st May an advance notice in favour of Y in respect of a prospective disposition to Y of that property and on 2nd May an advance notice in favour of Z in respect of a prospective disposition to Z of that property.
- Z's advance notice is entered in the application record of the Land Register on 8th May.
- Y's advance notice is so entered on 9th May.
- X delivers a disposition of the property to Y but also a disposition of it to Z.
- On 15th May, Y's disposition is registered in the Land Register.
- On 16th May, Z applies for registration in the Land Register.

Consequences:

- The Keeper accepts Z's application and on registering Z's disposition replaces Y's name by Z's in the Land Register. Z becomes registered proprietor of the property with effect from 16th May.

Example 4:

Circumstances:

- X, who is the owner of Whitemains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a disposition of the property to Y but also a deed of servitude over it to Z.
- On 8th May, the deed of servitude is registered in the Land Register.
- On 15th May, the disposition is registered in the Land Register.

Consequences:

- The Keeper removes the servitude from the Land Register.

Example 5:

Circumstances:

- X, who is the owner of Greymains, grants an advance notice in favour of Y in respect of a prospective standard security over the property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a standard security over the property to Y but also a standard security over it to Z.
- On 8th May, Z's standard security is registered in the Land Register.
- On 15th May, Y's standard security is registered in the Land Register.

Consequence:

- From 15th May, Y's standard security ranks ahead of Z's standard security.

Example 6:

Circumstances:

- X, who is the owner of Purplemains, grants an advance notice in favour of Y in respect of a prospective standard security over the property.

- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a standard security over the property to Y but also a disposition of it to Z.
- On 8th May, Z's disposition is registered in the Land Register.
- On 15th May, Y applies for registration of the standard security in the Land Register.

Consequences:

- The Keeper accepts Y's application and Z's land is encumbered with the standard security as from 15th May.

Example 7:

Circumstances:

- X, who is the owner of Greenmains, grants an advance notice in favour of Y in respect of a prospective servitude over the property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a deed of servitude over the property to Y but also a disposition of it to Z.
- On 8th May, the disposition is registered in the Land Register.
- On 15th May, Y applies for registration of the deed of servitude in the Land Register.

Consequences:

- The Keeper accepts Y's application and Z's land is encumbered with the servitude as from 15th May.

Example 8:

Circumstances:

- X, who holds a registered lease over Yellowmains, grants an advance notice in favour of Y in respect of a prospective assignation of the lease.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers an assignation of the lease to Y but also a standard security over the lease to Z.
- On 8th May, the standard security is registered in the Land Register.
- On 15th May, the assignation is registered in the Land Register.

Consequences:

- The Keeper removes the standard security from the Land Register.

Example 9:

Circumstances:

- X, who is the owner of Bluemains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a disposition of the property to Y.
- On 8th May, X grants a short lease over the property to Z who enters immediately into possession.
- On 15th May, the disposition is registered in the Land Register.

Consequence:

- The lease is not, by virtue of the registration, avoided.

Example 10:

Circumstances:

- X, who is the owner of Redmains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- On 2nd May, X is inhibited.
- On 3rd May, missives of sale between X and Y are concluded. Thereafter X delivers a disposition of the property to Y and the disposition is registered in the Land Register.

Consequence:

- The disposition, if so registered while the protected period is running, is not affected by the inhibition.

Section 55: Advance notices

156. This section sets out the criteria for an advance notice. Paragraphs (a) to (c) of subsection (1) set out the requirements for advance notices generally. Paragraph (d) applies just to advance notices where the property is on the Land Register. Paragraph (e) applies for property that is not in the Land Register, most of which will be recorded in the General Register of Sasines. The difference in requirements relates to how the property must be identified.

157. Subsection (2) means mapping is not required for an advance notice relating to a flat in a tenement or in a flatted building when the building is mapped as a single cadastral unit. That is subject to similar exceptions for pertinents as for registration under Part 2 of the Bill.

Section 56: Application for advance notice

158. This section sets out the application process for an advance notice. Subsection (2) provides that such an advance notice may be applied for by the person who may grant the protected deed or any person with their consent. In a house sale, this would allow the owner of the house to apply for an advance notice operating in favour of the prospective purchaser. The purchaser would be able, with the consent of the owner, to apply for an advance notice in favour of the lender who will be providing the standard security (mortgage) for the purchase.

Section 57: Period of effect of advance notices

159. This section provides that the protected period of an advance notice will be 35 days. This period can be shortened if the advance notice is discharged under section 60.

Section 58: Effect of advance notice: registered deed

160. This section sets out the effect of an advance notice on deeds registered in the Land Register. Subsections (2) and (3) give the principal effect. Where a deed, Y, is registered after another deed, Z, and deed Y is protected by an advance notice, registration of deed Y is to be completed as if deed Z did not exist. When deed Y has been duly registered, deed Z should then be “re-registered” for any effect it may have. In many circumstances Deed Z will be rejected as the person granting it is no longer entitled to do so. However if, for example, deeds Y and Z were both standard securities, deed Z could still be registered but would simply rank lower than deed Y. In the circumstances where deed Y is not, in fact, registered within the protected period, deed Z will be registered normally and have its full effect.

161. The section therefore prioritises deed Y over deed Z. The grantee of deed Z is not disadvantaged as the grantee will know of the existence and potential effect of the advance notice in favour of deed Y as it is on the Register.

Section 58A: Effect of advance notice: recorded deed

162. This section sets out the effect of an advance notice where there has been a deed recorded in the Register of Sasines ("deed Z") prior to a protected deed ("deed Y") being registered in the Land Register. Subsection (2) provides that when a decision is being made by the Keeper to register deed Y in the Land Register, that registration is to take effect as if deed Z had not been recorded. Subsection (3)(a) further clarifies that if deed Y has been registered, the registration has the same affect as if deed Z had not been recorded. Subsection (3)(b) provides that when the Keeper is making up the title sheet for the plot, if after the registration of deed Y deed Z has any effect on the plot, this must be shown on the title sheet.

Section 58B: Effect of advance notice: further provision

163. This section sets out the secondary effect of an advance notice. In general, an entry in the Register of Inhibitions means a person cannot sell their property free of the inhibition. Where an entry is added to the Register of Inhibitions during the protected period of an advance notice, the grantee of the protected deed will be able to purchase the property free of any effect of the inhibition.

Section 59: Removal of advance notice etc.

164. This section instructs the Keeper to remove an advance notice from the application record and add it to the archive record where the protected period has ended. Subsection (2) allows Scottish Ministers to make rules relaxing this obligation in certain circumstances. This covers the situation where the advance notice has resulted in the Keeper mapping a new property but the notice has lapsed before the deed is registered. It means the Keeper need not delete the mapping work while there is the possibility it will still be required in the near future.

Section 60: Discharge of advance notice

165. This section provides for the possibility that an advance notice may be discharged by the proposed grantor of the protected deed if the potential grantee consents. While advance notices do not freeze the Land Register, they may make a property effectively unmarketable to anyone other than the grantee of the deed referred to in the advance notice. The section allows (where, for example, the sale has fallen through) for the parties to bring the advance notice to an end before the 35-day period has elapsed. Subsections (4)(b) and (5) extend the same rule to the Sasine Register.

Section 61: Application of part to specific deeds

166. This section allows Scottish Ministers to make provision modifying this Part in relation to particular types of deeds which may be protected by advance notices.

PART 5: INACCURACIES IN THE REGISTER

Section 62: Meaning of “inaccuracy”

167. This section creates a new definition of inaccuracy in relation to the entries on the Land Register. Subsection (1) sets out when a title sheet is inaccurate. It may be inaccurate in two broad ways, because it says something that is wrong, or it does not say something when it should.

168. Subsection (2) sets out when the cadastral map is inaccurate. This broadly mirrors subsection (1). The effect of subsection (3) is that the cadastral map is considered accurate as long as the depictions in it are within the tolerances of the base map. The Ordnance Map, by virtue of section 11(6), is the default base map. Currently it has three general tolerances: 0.5 metres for urban areas, 1 metre for rural areas and 4 metres for moorland or mountain areas. These tolerances derive from the three different mapping scales used by the Ordnance Map in these areas.

169. The effect of subsection (4)(a) is that where an entry in the Land Register proceeds from a deed that was voidable and has since been reduced, the decree of reduction is to be given effect to by registration of the decree, and not by rectification. In other words, there is no inaccuracy; there is simply a later registration that changes the Register. This applies only to voidable deeds. Where an entry in the Land Register proceeds from a void deed, the register is to that extent inaccurate from the outset, and should be rectified.

170. The effect of subsection (4)(b) is that where an entry in the Land Register proceeds from a deed that has been rectified under the 1985 Act, the Register does not thereby become inaccurate, but instead the rectified deed is to be given effect to by registration.

Section 63: Shifting boundaries

171. This section provides that adjacent proprietors bounded by a natural water feature may, by registered agreement, provide that subsequent change to the physical boundary by the process of alluvion (i.e. gradual, imperceptible and non-temporary change to the water feature over time) should have no effect on their title boundary. In such circumstances, alluvion will not make the register inaccurate. Subsection (3) makes this clear.

PART 6: CAVEAT

Overview of Part 6

172. Part 6 provides for a new statutory system of caveats that regulate how litigation affecting titles in the Land Register is brought to the attention of third parties. In essence, a caveat is the publication of a title dispute on a title sheet. The purpose of a caveat is to warn of the ongoing dispute and the effect it might have on the title. A caveat does not prevent parties transacting with land that is subject to litigation, though it does have certain effects on registration as provided elsewhere in the Bill. Therefore, a third party is free to act despite the existence of the caveat. However, for instance, if the Keeper later adversely rectifies a title sheet as a result of the court action, the person would be unable to claim that they were not aware of the litigation and therefore compensation may be less than would be payable had there been no caveat. Caveats are intended to be time-limited but flexible and sections 67 to 70 make provision for their renewal, restriction, recall or discharge.

Section 65: Warrant to place a caveat

173. This section introduces caveats. Subsection (1) sets out the types of court action where caveats may be used. In such cases, one of the parties may apply to the court under subsection (2) for warrant to place a caveat on the title sheet of the plot of land to which the dispute relates. Subsection (3) sets out the court that may grant caveats. Subsection (4) sets out that the court must be satisfied that there is a *prima facie* case, a risk of the applicant being prejudiced by the other party dealing with the property and in all the circumstances it is reasonable to do so when deciding whether to grant a warrant for a caveat under subsection (3). See section 73(2) for the effect of caveats on warranty of title, and Part 9 for their other effects.

Section 66: Duration of caveat

174. Caveats are not open-ended. In the absence of further action, they expire 12 months after being placed on the title sheet.

Section 67: Renewal of caveat

175. A person who has placed a caveat on the Land Register may apply under this section to the court for its renewal. There is no maximum number of renewals the court may make.

Section 68: Restriction of caveat

176. This section makes provision for any person with an interest being able to apply to the court for a restriction of the effect of a caveat.

Section 69: Recall of caveat

177. This section makes provision that any person with an interest may apply to the court for the caveat to be recalled.

Section 70: Discharge of caveat

178. This section is self-explanatory.

PART 7: KEEPER'S WARRANTY

Keeper's warranty

Section 71: Keeper's warranty

179. This section continues the scheme of the state guarantee of title by Keeper's warranty.

180. Subsection (1) provides for the default position, that when an application is accepted, the Keeper's warranty applies to the title sheet to which the application relates. Subsection (2) lists the things that the Keeper's default warranty does not ordinarily cover. Subsection (2)(d) provides that even though a pertinent is registered, if by law it is not a pertinent, the act of registration does not make it so. Subsection (2)(h) ensures that the warranty does not cover the case where by administrative error on the Keeper's part, the terms of the registration are more favourable to the applicant than justified by the deed inducing registration or by what is sought to be registered in an application for voluntary registration. Subsection (2)(i) means the warranty does not cover the case where a title boundary is tied to a water boundary that has shifted.

181. The effect of subsection (3) is that where a person is given warranty in respect of an application, their successors in title can receive the benefit of that warranty.

182. Subsection (5) ensures there is no warranty in relation to an entry in favour of a prescriptive claimant.

Section 72: Keeper’s warranty on registration under sections 25 and 29

183. This section provides for warranty to be granted to a person where their land has been registered in consequence of an application for registration of a subordinate real right under section 25 or by Keeper-induced registration under section 29. Subsection (3) makes modifications to ensure that the rules excluding a more extensive warranty on an administrative error by the Keeper apply to registrations under sections 25 and 29 as they do to registration under other sections. Subsection (4) provides that this section is subject to sections 73 and 74.

Section 73: Extension, limitation or exclusion of warranty

184. Subsection (1) allows the Keeper to give any level of warranty to an applicant. The effect of subsection (2) is that the Keeper might exclude warranty for the next owner of property if there is a caveat on the title sheet. Subsection (4) allows warranty to be given to a prescriptive claimant when they have perfected their title by virtue of section 1(1) of the Prescription and Limitation (Scotland) Act 1973.

Section 74: Variation of warranty

185. This section allows the Keeper in certain restricted circumstances to vary the level of warranty that an owner of a registered title has after the registration process has been completed.

Claims under warranty

Section 75: Claims under Keeper’s warranty: general

186. This section provides the basis for the payment of compensation for loss incurred as a result of a breach of warranty. Subsection (2) continues the important principle that liability only arises when the register is rectified.

Section 76: Claim under warranty: circumstances where liability excluded

187. This section lists various important limitations to the Keeper’s liability. Paragraph (a) means that where the rectification arises from reasonable reliance on the base map (the default map being the Ordnance Map), the Keeper need not pay compensation. Paragraph (b) means that an applicant cannot rely on the warranty where the inaccuracy was known or ought to have been known of by the applicant at the time of registration. The effect of paragraph (c) is that where the rectification arises from a breach of the duty of care to the Keeper by the applicant or the applicant’s solicitor, the Keeper need not pay compensation.

Section 77: Claims under warranty: quantification of compensation

188. This section is self-explanatory.

PART 8: RECTIFICATION OF THE REGISTER

Rectification

Section 78: Rectification of the register

189. This section imposes a duty on the Keeper to rectify the Land Register when it contains an inaccuracy. The term "inaccuracy" appeared in section 9(1) of the Land Registration (Scotland) Act 1979, however it was not defined. The meaning of "inaccuracy" is provided for in section 62 of the Bill.

190. Subsection (1) is an important provision that sets a high evidential standard for rectification - that the inaccuracy is "manifest". This means that the position must be beyond dispute, in effect that it is more than simply probable that there is an inaccuracy. It is for the Keeper to determine when an inaccuracy is manifest or not.

191. Subsection (2) maintains the approach, providing that the Keeper must only rectify the register if what is needed to rectify the register is manifest. It is likely that an inaccuracy, and what is needed for rectification of an inaccuracy, will be manifest only where either there is no room for doubt or where the matter has been judicially determined. In the absence of a judicial determination, it is anticipated that the Keeper's awareness of an inaccuracy as manifest occurs on the date of rectification.

Section 79: Rectification where registration provisional etc.

192. This section is a limited qualification to the Keeper's duty to rectify under section 78. Where rectification would interrupt a period of positive prescription (including in the case of a prescriptive claimant under section 42), the Keeper may only rectify the Register where those who are affected consent or where the fact of the inaccuracy has been judicially determined.

Section 79A: Referral to the Lands Tribunal for Scotland

193. This section will allow anyone with an interest to refer questions relating to the accuracy of the register and what may need to be done to rectify the register to the Lands Tribunal for Scotland. The power mirrors the two limbs for the rectification of inaccuracies contained in section 78. It allows the Lands Tribunal discretion to determine whether a question is one which has a connection with the accuracy of the Land Register, e.g. to resolve a dispute over a boundary between properties or the existence of a servitude. Giving the Tribunal this jurisdiction provides parties with an alternative to the ordinary courts to have questions regarding the accuracy of the register determined. Subsection (2) provides for notice by the Lands Tribunal once a question has been determined, to the applicant, the Keeper and any other interested parties. Otherwise the processes will be regulated by the Lands Tribunal rules and the discretion of the Tribunal. It will remain for the Keeper to decide under section 78 how to reflect the Lands Tribunal's determination (subject to appeal).

Section 64: Proceedings involving the accuracy of the register

194. This section is self-explanatory.

Compensation in consequence of rectification

Section 80: Rectification: compensation for certain expenses and losses

195. This section is self-explanatory.

Section 81: Rectification: circumstances where liability excluded

196. This section provides for the limitations to the Keeper's liability to pay compensation under section 80 in respect of rectification of an inaccuracy. Paragraph (a) excludes liability, for example, where rights have been changed by an off-register event such as long negative prescription (for example where a servitude right of access is dissolved where it is not used over 20 years).

197. Paragraph (c) provides that the Keeper has no liability in relation to rectifications of inaccuracies caused by the fact the title is in favour of a prescriptive claimant. This means, for example, that the removal of a provisional marking would not result in liability.

PART 9: RIGHTS OF PERSONS ACQUIRING ETC. IN GOOD FAITH

Overview of Part 9

198. This part provides for the circumstances in which the Land Register is inaccurate in law or fact, but is not to be rectified. In these cases, the Part provides for the underlying property rights to be transferred to the person in whose name title to land is currently registered. Put another way, instead of the register being changed, property rights are changed.

199. The circumstances where the Bill provides for this transfer of rights are limited and are most likely to operate in the cases of error or fraudulent sale and subsequent registration. Where a property is fraudulently registered or registered in error, the true owner can seek a reversal of that registration in their favour, as long as the property has not been openly possessed since the registration for 10 years, or registered in favour of an innocent third party more than one year after the original registration. However, where the property has been so possessed by a person, or registered in favour of such an innocent third party, the registration cannot be reversed. In such cases, the original owner would be compensated by the Keeper.

Ownership

Section 82: Acquisition from disponent without valid title

200. The effect of subsections (1) to (3) is that if the register shows someone as proprietor, but that person's title is in fact void, then when that person disposes the title to another (and that second person is duly registered as owner), if the requirements in subsection (3) (including regarding good faith and possession for one year) are met, then that second person acquires ownership. In the absence of evidence to the contrary, the awareness of the Keeper referred to in subsection (3)(b) can be deduced from the information on the register.

201. Subsections (4) to (6) provide for the date when ownership is acquired under subsection (2). It is the later of the date of registration and the expiry of the one-year period of peaceful possession.

Section 83: Acquisition from representative of disponent without valid title

202. This section provides that section 82 also applies where the disposition in favour of a good faith acquirer is delivered by a representative of the registered proprietor (for example a trustee or executor).

Leases

Section 84: Acquisition from assigner without valid title

203. This section is the equivalent section to section 82, but for assignation of leases. It applies only to cases where there exists a valid lease but the person who assigns it does not have a title to it.

Section 85: Acquisition from representative of assigner without valid title

204. This section is the equivalent section to section 83 on representatives, but for assignation of leases.

Servitudes

Section 86: Grant of servitude by person not proprietor

205. This section is the equivalent section to section 82, but for servitudes. It provides that in certain cases a servitude granted by someone with a bad title is valid. Like section 82, it requires the proprietor of the benefited property to be in good faith. This section applies only to the grant of a new servitude. It does not cover the case where land is disposed and from the register it appears that there is a servitude benefiting the property (i.e. as a pertinent), but in fact the servitude is invalid. In such a case, the servitude remains invalid notwithstanding the transfer to a good faith acquirer.

Extinction of encumbrances etc

Section 87: Extinction of encumbrance when land disposed

206. Subsections (1) and (2) provide that where an encumbrance (such as a standard security) has been omitted from the register and there is no relevant caveat on the title sheet, a good faith acquirer acquires the land free from that encumbrance. However, where, for example, a property is subject to a standard security and the owner forges and registers a discharge (and the standard security is deleted from the title sheet) the property is still encumbered by the security because the discharge is a forgery. Nevertheless, if in the example the owner disposed the title to another person and that person was in good faith, the security would be extinguished on the day when the second person is registered as proprietor.

207. Subsection (4) lists the types of encumbrances that are not subject to the rule in subsections (1) and (2). Subsections (1) and (2) only have effect where the Keeper should have entered a burden in the burdens section of a title sheet, but has failed to do so. Consequently, subsections (1) and (2) do not apply to any encumbrance which need not be entered in the Land Register either because:

- it cannot be registered (such as in the case of a short lease);

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- it relates to an off-register event (such as a servitude acquired by prescription); or
- it relates to an overriding interest (such as a public right of way).

Section 88: Extinction of encumbrance when lease assigned

208. This section is the equivalent of section 87, but for assignation of leases.

Section 89: Extinction of floating charge when land disposed

209. This section protects a good faith acquirer from the risk of an attached floating charge crystallising over their property where the floating charge was granted by a predecessor in title of the person who sold them the property.

Compensation in consequence of this Part

Section 90: Compensation for loss incurred in consequence of this part

210. Where this Part transfers a right to someone (an innocent third party), the original owner of the right will inevitably be deprived of the right. This section makes provision for compensation of such persons.

Section 91: Quantification of compensation etc.

211. This section makes provision about how much compensation is payable under section 90. It is otherwise self-explanatory.

PART 10: ELECTRONIC DOCUMENTS, ELECTRONIC CONVEYANCING AND ELECTRONIC REGISTRATION

Overview of Part 10

212. This part of the Bill amends the Requirements of Writing (Scotland) Act 1995, updating it to allow for electronic documents to have the equivalent status and standards of validity and authenticity as paper documents have now.

Electronic documents

Section 92: Where requirement for writing satisfied by electronic document

213. This section makes changes to section 1 of the Requirements of Writing (Scotland) Act 1995 (the 1995 Act). Subsection (2) makes textual adjustments to section 1 of the 1995 Act to ensure that where a document is required to be in writing (and many documents do not require to be in writing), the form of that document can be either as a traditional document (for example on paper) or an electronic document (as long as it is a document capable of being electronic and is in the form specified in regulations).

214. Subsection (2)(a)(iv) provides that agreements under section 63 of the Bill (about shifting boundaries of subjects bounded by a water boundary) must be in writing.

Section 93: Electronic documents

215. This section inserts a new Part 3 into the Requirements of Writing (Scotland) Act 1995 (the 1995 Act) comprising seven new sections on electronic documents.

216. The new Part contains powers for Scottish Ministers to carry out two major reforms by subordinate legislation. First, it permits Scottish Ministers to make regulations making documents electronically valid. This will allow, for example, regulations to make contracts relating to transactions over land, known as missives, electronically valid. This will lead to solicitors not needing to exchange paper documents. Second, it permits Scottish Ministers to make regulations allowing electronic registration of electronically valid documents in the Keeper's registers.

217. Consequential amendments to the 1995 Act (particularly to ensure law on paper documents continues to operate) are provided for in schedule 3.

218. Inserted section 9A defines electronic documents.

219. Inserted section 9B allows Scottish Ministers to make regulations in respect of the types of documents under section 1(2) of the 1995 Act capable of being electronically formally valid. Subsection 1 makes provision that in order for an electronic document to reach the threshold of being formally valid, the document needs to be authenticated by the granter or granters. Subsection (2) provides that an electronic document is authenticated if it bears an electronic signature. In this way, authentication can be said to be akin to the wet signature applied to a traditional document. The conditions that the electronic signature must comply with are stipulated in subsection 2(a) to (c). A document must be of a type authorised to be a valid electronic document under subsection (1)(b) and are authenticated in accordance with regulations under subsection (2)(c). Subsection (3) allows a contract mentioned in section 1(2)(a) of the 1995 Act to be constituted by a mix of electronic and traditional documents.

220. Inserted section 9C gives Scottish Ministers a power to specify in regulations what level of authentication and certification is necessary to ensure the document can be presumed to be authenticated. On being authenticated alone, the document can be valid under section 9B. However, in order for an electronic document to have probative status, certain documents may have to have third party certification. Traditional documents receive self-proving status by witnessing. Once electronically signed in accordance with regulations made under section 9C(2), an electronic document is capable of being automatically valid without witnessing (as the equivalent evidence of who signed the electronic document (and when) is securely encrypted into the constituent data of the document).

221. Inserted section 9D makes provision allowing courts to grant decree that an electronic document is self-proving even if there is no presumption in respect of the document under section 9C.

222. Inserted section 9E allows the regulations to make provision in relation to alteration and annexations of electronically valid documents.

223. Inserted section 9F allows electronic documents to be delivered electronically (such as through the internet) or by other reasonable means (such as physical delivery of a DVD or USB memory stick). Subsection (2) is self-explanatory.

224. Inserted section 9G (1) to (3) allows Scottish Ministers to make regulations allowing for electronic registration of electronically valid documents in any of the Keeper of the Registers of Scotland's registers. Such a document must be of a type specified in regulations under subsection (3) and be electronically authenticated under section 9C, 9D or 9E(1). Subsection (6) list the documents to which the regulations need not apply.

Section 94: Amendment of Requirements of Writing (Scotland) Act 1995

225. This section is self-explanatory. See below on schedule 3.

Electronic conveyancing

Section 95: Automated registration

226. This section provides for the Keeper to run a computer system for electronic registration in the Land Register. Currently the Keeper runs an Automated Registration of Title to Land "ARTL" system for generating electronic conveyancing deeds and electronically submitting such deeds to the Keeper. This system was provided for by the Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 and its successors. The 2006 Order was made under the Electronic Communications Act 2000.

227. Subsection (3) allows Scottish Ministers to make various provisions in regulations regarding automated registration. This will allow provision to be made for ARTL or any successor system.

Electronic recording and registration

Section 96: Power to enable electronic registration

228. This section makes provision for Scottish Ministers to make provision in regulations for electronic registration in any of the Keeper's registers (including the General Register of Sasines, the Register of Inhibitions and the Books of Council and Session). Section 95 only makes provision for the Land Register. Subsection (3) allows the regulations to modify enactments in consequence of the power in subsection (1).

PART 11: MISCELLANEOUS AND GENERAL

Deduction of title

Section 97: Deduction of title

229. 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 (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). In

order to demonstrate to the Keeper that the deed has been validly granted it will continue to be necessary to submit all links in title even if no clause of deduction of title is required.

Notes on register

Section 98: Note of date on which entry in register is made

230. This section is self-explanatory

Appeals

Section 99: Appeals

231. This section is self-explanatory.

Extracts and certified copies

Section 100: Extracts and certified copies: general

232. 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 by e-mail if the person requests that the document be received in that form.

Section 101: Evidential status of extract or certified copy

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

Section 102: Liability of Keeper in respect of extracts, information and lost documents etc.

234. This section means that the Keeper is taken to warrant extracts, certified copies and certain other information. This ensures that people can be confident about the accuracy of the documents when relying on them in the course of commercial business.

Information and access

Section 103: Information and access

235. This section is self-explanatory.

Keeper's functions

Section 104: Provisions of services by the Keeper

236. 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 105: Performance of Keeper's functions during vacancy in office etc.

237. 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 106: Fees

238. 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 in the Bill.

239. Subsection (1)(a) allows Scottish Ministers to provide for what fees may be charged for. 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.

240. 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 99.

241. 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.

242. 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 reduce the fee for a type of application for a period of time.

243. 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.

244. 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.

245. Subsection (4)(b) ensures that the power to provide consultancy services under section 104 is not affected by this section.

Duty to take reasonable care

Section 107: Duties of certain persons

246. 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 108: Offence relating to applications for registration

247. Subsection (1) provides that it is an offence for any party submitting an application to the Keeper to knowingly or recklessly 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.

248. 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.

249. Subsections (6) to (7A) 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 109: Interpretation

250. This section is self-explanatory.

Section 110: References to “registering” etc. in the Land Register of Scotland

251. This section is self-explanatory.

Section 111: Land register rules

252. 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 112: Subordinate legislation

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

Section 113: Ancillary provision

254. This section is self-explanatory.

Section 114: Transitional provisions

255. This section is self-explanatory.

Section 115: Minor and consequential modifications

256. This section is self-explanatory.

Section 116: Saving provisions

257. This section contains savings 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.

258. 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 117: Crown application

259. This section is self-explanatory.

Section 118: The designated day

260. 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 Bill, listed in section 119(2), will come into force.

Sections 119: Commencement

261. This section is self-explanatory.

Sections 120: Short title

262. This section is self-explanatory.

SCHEDULES

Schedule 1: Registered leases tenanted in common

263. As explained in relation to sections 17 to 20 on shared plots, this schedule makes equivalent provision to shared plots for shared lease areas. The shared lease area title sheets provided for correspond to shared plot title sheets but relate to shared lease interests rather than shared ownership interests.

Schedule 2: Amendment of Registration of Leases (Scotland) Act 1857

264. This schedule makes consequential changes to the changes made by section 51.

Schedule 3: Amendment of Requirements of Writing (Scotland) Act 1995

Overview of schedule 3

265. This schedule makes changes consequential on the changes in Part 10 of the Bill to the Requirements of Writing (Scotland) Act 1995.

266. Paragraphs 2 to 17 provide for a new Part 2 of the 1995 Act. The new Part 2 makes provision for the formal validity of traditional documents, which are those documents written on paper (as opposed to being electronic). Most of the paragraphs make consequential amendment on the change of label from “document” to “traditional document”. In particular, sub-paragraphs 11(ca) and (cb) and 19A apply the same rules for probativity for the recording of traditional documents in the Sasine Register to registration in the Land Register, including an exclusion from these rules when the registration or recording of a document is required or expressly permitted by an enactment.

267. Paragraph 13 repeals section 6A of the 1995 Act. That section was inserted into the 1995 Act by section 222 of the Bankruptcy and Diligence etc (Scotland) Act 2007 to provide, in the short term, a mechanism by which a creditor could proceed with summary diligence upon a personal bond contained with a standard security created in electronic form within the Keeper’s Automated Registration of Title to Land system, given that the Books of Council and Session were open only to traditional documents. Under new section 9G of the 1995 Act, all types of electronic document become directly registrable in the Books of Council and Session provided that they meet prescribed standards, and so the provision is no longer necessary.

268. Paragraph 19 makes amendments to section 12 of the 1995 Act (the interpretation section). In paragraph (b), inserted subsection (4) provides explanation as to the meaning of certification in relation to electronic documents.

Schedule 4: Transitional provisions

269. This schedule deals with the transition from registration in the Land Register under the 1979 Act to registration under the Bill. Reference in this note to the designated day is to the day that the new scheme comes into force.

Paragraphs 1 to 6

270. Paragraphs 1 to 6 contain provisions about the treatment of existing title sheets. They become part of the Title Sheet Record and as such, title sheets for plots of land, or lease title sheets. The Keeper is given the power to make existing title sheets conform to the new scheme but is generally not obliged to do so. The C section on new title sheets will be called the “securities section”. The Keeper will have the power to change the name of the C section (currently called the “charges” section) to the securities section and the B section (proprietorship section) of lease title sheets to the tenancy section.

Paragraphs 7 to 11

271. Paragraphs 7 to 11 contain provisions about common areas that are at present included in the title sheet of each of the sharing properties. The new scheme requires that when such areas are created in future they are to have their own title sheet. Paragraphs 7 and 8 allow, but do not oblige, the Keeper to create a separate title sheet for common areas that already exist. Paragraph 9 deals with developments that are part-completed on the designated day. It allows the present practice of including common areas in the title sheets of the sharing properties to continue in respect of the remainder of the development.

Paragraph 12

272. This paragraph provides for the migration of existing documents into the archive record.

Paragraphs 13 and 14

273. Paragraph 13 makes clear that applications for registration that are pending at the designated day will be dealt with as applications under the 1979 Act.

274. Paragraph 14 provides that an application for rectification under section 9 of the 1979 Act, which has not been determined by the Keeper by the designated day, will fall. However, that does not affect the applicant's rights as the Keeper is under a positive duty to rectify inaccuracies.

Paragraphs 15 and 16

275. Paragraphs 15 and 16 make clear that any claims for indemnity, or for reimbursement of expenses under the 1979 Act that have already vested are not affected by the new scheme.

Paragraphs 17 to 24

276. Paragraphs 17 to 24 deal with what are known bijural inaccuracies. For the concept of bijural inaccuracy, see Part 17 of the Scottish Law Commission Report (Scot Law Com No. 222). In the new scheme, there will be no bijural inaccuracies so provision requires to be made for inaccuracies of that kind that exist immediately prior to the designated day. They must either (i) cease to be an inaccuracy (in which case the rights of the parties are realigned to follow what the Land Register says they are), or (ii) be re-conceptualised as an actual inaccuracy.

277. The test adopted as to whether (i) or (ii) occurs is whether a particular inaccuracy could have been rectified under the rules in section 9 of the 1979 Act. If so, paragraphs 17 to 21 convert the bijural inaccuracy into an actual inaccuracy and make provision for compensation to be paid to a person losing a right if the register is then rectified save where a right to indemnity would not have arisen under the 1979 Act. If, however, the bijural inaccuracy could not be rectified under section 9 of the 1979 Act, paragraphs 22 to 24 make provision for the inaccuracy to cease to be an inaccuracy (i.e. for the rights of the parties concerned to be realigned so as to conform to what the Land Register says they are). Provision is also made for the payment of compensation to a person suffering loss as a result of such realignment where a right to indemnity would have arisen under the 1979 Act if rectification under section 9 was not possible.

278. In both cases, the practical result is the same as it is under the 1979 Act. A title that was vulnerable to rectification remains vulnerable, while one that was invulnerable (usually due to the protection given to a proprietor in possession) becomes free from the possibility of rectification. As possession is important under the current law, and in order to minimise problems of evidence, paragraph 18 provides that the person registered as proprietor of the land is presumed to be in possession for the purposes of determining whether the Keeper had power to rectify.

Paragraph 25

279. Paragraph 25 applies where the title to a flat in a tenement is already recorded in the General Register of Sasines or registered in the Land Register. In such cases, following present practice the Keeper will be able to continue to depict land further than 25 metres from the tenement building as part of the steading and, where such land is a common area, the Keeper will not be required to quantify the pro indiviso shares of the flats in such land in the proprietorship section of the title sheets of the individual flats.

Paragraph 26

280. Paragraph 26 is self-explanatory.

Schedule 5: Minor and consequential modifications

Overview

281. This schedule makes minor and consequential changes. Most of the changes are either consequential on the repeal of parts of the Land Registration (Scotland) Act 1979 and its replacement with the Bill or consequential on the amendments to the Requirements of Writing (Scotland) Act 1995 and the extension of the means of documents being self-proving from requiring to be “subscribed” (which is a paper only process) to also being capable of being “authenticated” (that is, authenticated as valid electronic documents in accordance with regulations made under the 1995 Act).

Paragraph 1 - Lands Clauses Consolidation (Scotland) Act 1845

282. This amends the note about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form.

Paragraph 2 - Commissioners Clauses Act 1847

283. Subparagraph (2) amends the 1847 Act to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form. Subparagraph (3) replaces the specific reference to the Requirements of Writing (Scotland) Act 1995 with a more general reference to the Act.

Paragraph 3 - Ordnance Board Transfer Act 1855

284. This paragraph amends section 5(2) of the 1855 Act to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.

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Paragraph 4 - Transmission of Moveable Property (Scotland) Act 1862

285. This amends the Schedules to the 1862 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

Paragraph 5 - Land Registers (Scotland) Act 1868 (c.64)

286. The effect of this amendment is to make clear that the provisions of the 1868 Act which are referred to do not apply to the Land Register.

Paragraph 6 - Titles to Land Consolidation (Scotland) Act 1868

287. Subparagraphs (2) and (3), which are about litigiousity, are disapplied in relation to the Land Register. The reason is that the situations they deal with will be dealt with by caveats.

288. Subparagraph (4) amends the form in Schedule B to the 1868 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

Paragraph 7 - Conveyancing (Scotland) Act 1874

289. Subparagraph (2) amends the note about mode of execution in Schedule M to the 1874 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

Paragraph 8 - Trusts (Scotland) Act 1921

290. Subparagraphs (2) and (3) amend the notes about mode of execution in the Schedules to the 1921 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

Paragraph 9 - Conveyancing (Scotland) Act 1924

291. Subparagraph (2) adds a reference to the Land Register of Scotland to section 2(5).

292. Subparagraph (3) is consequential on the repeal of schedule K by the Abolition of Feudal Tenure etc. (Scotland) Act 2000 schedule 13(1) paragraph 1.

293. Subparagraph (4) is similar to the provisions in paragraph 6(2) and (3) above concerning the Titles to Land Consolidation (Scotland) Act 1868. It disapplies the provisions of the 1924 Act in relation to the Land Register, because the matters in question will be dealt with by the caveat procedure.

294. Subparagraph (5) amends schedule B to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

Paragraph 10 - Burgh Registers (Scotland) Act 1926

295. This paragraph is self-explanatory.

