



Scottish Law Commission
promoting law reform

| (SCOT LAW COM No 222)

Report on Land Registration

Volume Two

report



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NOTES

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Draft Land Registration (Scotland) Bill

Land Registration (Scotland) Bill

[DRAFT]

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Land Registration (Scotland) Bill

[DRAFT]

An Act to make further provision about land registration; to amend the Requirements of Writing (Scotland) Act 1995; and for connected purposes

PART 1

PRELIMINARY

1 The Land Register of Scotland

- (1) There is to continue to be a public register (known as the Land Register of Scotland) of rights in land in Scotland.
- (2) In this Act—
 - (a) the Land Register of Scotland is referred to as “the register”, and
 - (b) unless the context otherwise requires, any reference to “registration” is to registration in that register (analogous expressions being construed accordingly).
- (3) The register is to continue to be under the management and control of the Keeper of the Registers of Scotland (in this Act referred to as “the Keeper”).
- (4) The register is to continue to have a seal.
- (5) Subject to the provisions of this Act, the register is to be in such form (which may be, or be in part, an electronic form) as the Keeper thinks fit.
- (6) The Keeper is to take such steps as appear reasonable to the Keeper for protecting the register from—
 - (a) interference,
 - (b) unlawful access, or
 - (c) damage.

NOTE

Part 1 consists of just one section, which contains preliminary provisions. The essence of the section is about continuity; the Bill does not propose a new Land Register, but is about continuing, and ultimately completing, the existing register. See paragraph 3.2 of the Report.

Subsection (1) provides that there continues to be a public register known as the Land Register of Scotland. This effectively replicates section 1(1) of the Land Registration (Scotland) Act 1979 (“the 1979 Act”). However, whereas that section provided for a register of “interests” in land, the new approach is that the register be a register of “rights” in land. This makes no substantive difference; “interest in land” was defined in section 28 of the 1979 Act to mean a right in land. “Land” is defined in section 92(1) of the Bill to include buildings and structures, the seabed of the territorial sea of the United Kingdom adjacent to Scotland, and other water covered land. There had been some uncertainty as to whether, under the

provisions of the 1979 Act, the Land Register extended to the territorial seabed. Section 92(1) removes that uncertainty.

Paragraph (a) of subsection (2) provides that in the Bill, the Land Register of Scotland is referred to as "the register." Paragraph (b) is similar to section 1(3) of the 1979 Act and should be read in conjunction with section 93 of the Bill.

Subsection (3) provides that the Land Register is to continue under the management and control of the Keeper of the Registers of Scotland. This provides continuity from section 1(2) of the 1979 Act.

Subsection (4) provides that the Land Register is to continue to have a seal. This provides continuity from a further norm contained in section 1(2) of the 1979 Act. Like the 1979 Act, the draft Bill does not contain any provision requiring the Keeper to employ the seal for any given purpose.

Subsection (5) makes it plain that (subject to the constraints arising from the structure of the Land Register required by Part 2 of the draft Bill) the Keeper has discretion as to the form in which the register is kept.

The Land Register is a vital public asset and the Department of the Registers of Scotland is careful to protect its integrity. Subsection (6) provides that the Keeper is to take such steps as appear reasonable to protect the register from interference, unlawful access and damage. The subsection is intended to underpin current practice and does not call for any radical change of practice by the Keeper. The security measures employed by the Keeper will of course evolve over time and with changing technology.

PART 2

STRUCTURE AND CONTENTS OF THE REGISTER

General provisions

2 The parts of the register

The register consists of—

- (a) the cadastral map (as defined by section 3(1)),
- (b) the title sheet record (as defined by section 5(1)),
- (c) the archive record (as defined by section 12(1)), and
- (d) the application record (as defined by section 13(1)).

NOTE

Section 2 sets out the four parts of the Land Register. Details of these four parts are given in the following sections. The Cadastral Map is a new concept, but in a sense already exists.

The Title Sheet Record already exists and is recognised by the 1979 Act. The name exists *de facto* but has not hitherto been used in legislation. At present the Archive Record and the Application Record exist *de facto* but have no statutory basis.

3 The cadastral map: general

- (1) There is to be maintained, as part of the register, a map of Scotland (to be known as the "cadastral map")—
 - (a) constituted by the totality of registered geospatial data (other than supplementary data in individual title sheets),
 - (b) divided into cadastral units, each unit—

- (i) representing a single registered plot of land, and
 - (ii) distinguished by a cadastral unit number assigned by the Keeper and consisting of numerals or of letters and numerals, and
 - (c) showing the boundaries of those units and otherwise depicting registered rights in such manner as the Keeper considers appropriate.
- (2) The cadastral map may (but need not) also show the boundaries of those units on the vertical plane.
 - (3) The cadastral map may contain such other information as the Keeper thinks fit.
 - (4) A plot of land is an area all of which is owned by one person or one set of persons.
 - (5) This section and section 4 are without prejudice to section 15 and are subject to section 29.

NOTE

Section 3 provides details about the Cadastral Map. There is to be a single Cadastral Map for the whole of Scotland, showing title boundaries. Subsection (1)(c) provides that the geospatial title data is not limited to boundaries of plots. For example registered lease boundaries, servitude lines and so on are also included in the map.

Title sheets can have "supplementary plans" but these do not form part of the Cadastral Map, only of the title sheet in question.

Subsection (2) permits, but does not compel, 3-D mapping. Subsection (4) explains the concept of a "plot" of land. A registered lease is not a plot and hence there is no cadastral unit for a lease. (Though there can be a title sheet for a lease.) There is a one-to-one correspondence between cadastral units and plots of land. (Section 5(2) goes on to provide that, subject to certain exceptions, there is also a one-to-one correlation between plots of land and title sheets.)

Subsection (5) provides that this section, and also section 4, are subject to section 15, which contains special rules for mapping of tenement buildings, and section 29, which concerns provisional shared plots.

4 Further provision as respects the cadastral map

- (1) A separate tenement constitutes a plot of land for the purposes of this Act.
- (2) A separate tenement is to be mapped in such a way as will distinguish it as a cadastral unit from other units.
- (3) Subject to subsections (1) and (4), the same area of land cannot be represented by more than one cadastral unit.
- (4) Where a plot of land—
 - (a) is so small that it cannot readily be delineated in the cadastral map, and
 - (b) is a pertinent of another plot of land (or as the case may be of two or more other plots of land),

it need not be represented as a discrete cadastral unit but may instead be included in another cadastral unit (or in other cadastral units).

- (5) The cadastral map may be based either—
 - (a) upon the Ordnance Map, or
 - (b) upon some other system of mapping, being a system which accords with such requirements as the Scottish Ministers may prescribe,
 or partly upon the Ordnance Map and partly upon such an other system (and in this Act the expression “the base map” is to be construed accordingly).
- (6) On the base map being updated, the Keeper is to make any necessary changes to the register which are consequent upon the updating.
- (7) Where a plot of land—
 - (a) lies wholly outwith the base map, the Keeper may, or
 - (b) extends partly outwith the base map, the Keeper may, in so far as it so extends,
 adopt such means of representing the boundaries in the cadastral map as the Keeper thinks fit.
- (8) The Keeper may—
 - (a) combine cadastral units, or
 - (b) divide a cadastral unit,
 and on carrying out such a division may combine any of the resultant parts with a different cadastral unit.
- (9) In consequence of anything done under subsection (8), the Keeper is to make such changes to the title sheet record as are requisite.
- (10) The Keeper is to ensure that the cadastral map is searchable in such manner (if any) as may be prescribed by rules under section 95(1)(a).
- (11) The Keeper may provide for the cadastral map to be searchable in such further manner as the Keeper may determine.

NOTE

Separate tenements, such as salmon fishing rights and mineral rights, are "plots". This is implicit in section 3(4), but section 4(1) spells the point out. The reason is that Scots property law treats separate tenements as plots of land. Subsection (2) requires that separate tenement extents be mapped in a way that allows them to be distinguished from the mapping of other plots. This could, for example, be by mapping these titles on separate layers within the mapping system, but the provision is not prescriptive as to the approach that the Keeper should take.

Subsection (3) lays down the "no overlapping cadastral units" principle, a principle that is currently not always observed. See paragraphs 5.25 to 5.30 of the Report. Separate tenements form an exception: paragraph 5.29 of the Report. Subsection (4) makes a de minimis exception to this default rule intended to apply to shared subjects, such as co-owned boundary walls, which are too small for it to be practical to map them as a separate plot. See paragraph 5.28 of the Report and also section 5(8). The default rule is also subject to certain transitional exceptions contained in schedule 6. Registered leases are not mentioned as an exception because a lease is not a plot and so leases are not capable of infringing the "no overlap" principle.

Subsection (5) requires the Cadastral Map to be based on a base map. At present Ordnance Survey mapping is used as the base map. It provides the plotting of topographical features on to which the Keeper overlays title boundaries and other cadastral information. The subsection implements recommendation 13 (paragraph 5.8 of the Report) by permitting the Keeper to either continue to use the Ordnance Map or to adopt some other system of mapping meeting prescribed standards for all or part of the base map.

Subsection (6) deals with an aspect of what the Department of the Registers of Scotland calls map-base maintenance. Ordnance Survey's mapping is a dynamic product which is continually being revised and improved. Sometimes improvements to the base map lead to a consequential need to change title mapping, for example where a physical feature which is also a title boundary comes to be more accurately represented on the base map. The subsection requires the Keeper to make any necessary updates to the cadastral mapping. See paragraph 5.10 of the Report.

Subsection (7) implements recommendation 14 (paragraph 5.12 of the Report) concerning areas of seabed outwith the limits of the base map.

Rule 8 of the Land Registration (Scotland) Rules 2006 permits the Keeper to combine and divide title sheets. In the new conceptual scheme, this means combining and dividing cadastral units. Subsection (8) provides for this, whilst subsection (9) requires that any necessary consequential changes to the textual Title Sheet Record be made.

Subsection (10) provides that the Cadastral Map is to be searchable in such manner as may be prescribed by rules. This replaces the current requirement that the Keeper must maintain an index map. See paragraphs 4.10 and 4.38 of the Report. Subsection (11) permits the Keeper to provide additional types of search functionality. Whilst the draft Bill is not prescriptive as to types of searchability that may be required or provided, examples could include searchability by cadastral unit number, by grid co-ordinates and by postcode.

5 Title sheets: structure etc.

- (1) Title sheets are to be maintained as part of the register and are, as so maintained, to be known collectively as the “title sheet record”.
- (2) There is to be a title sheet (and, subject to subsections (6) and (8) and to section 29, only one title sheet) for each plot of land and each such title sheet is to be distinguished by a title number identical to the cadastral unit number.
- (3) A title sheet is to comprise—
 - (a) a property section,
 - (b) a proprietorship section,
 - (c) a securities section, and
 - (d) a burdens section.
- (4) A title sheet may also, if rules under section 95(1)(a) so provide, include any further section.
- (5) A section of a title sheet may be sub-divided if and as the Keeper thinks fit.
- (6) There may be a separate title sheet (to be known as a “lease title sheet”) for a registered lease if the Keeper thinks fit; and each lease title sheet is to be distinguished by a title number consisting either of numerals or of letters and numerals.
- (7) If there is a lease title sheet, the cadastral map is to show its title number.
- (8) Where a plot of land is such as is described in paragraphs (a) and (b) of section 4(4), there need not be a discrete title sheet for the plot but it may instead be included in a different title sheet (or different *pro indiviso* shares of the plot may be included in different title sheets).

NOTE

Sections 5 to 11 inclusive concern the Title Sheet Record. In general, the intention is that title sheets continue to be made up substantially as at present. Many of the norms in these sections repeat existing requirements of the 1979 Act and the Land Registration (Scotland) Rules 2006. See Part 4 of the Report and recommendation 1.

Subsection (1) provides that the totality of the title sheets is to be known as the Title Sheet Record: this gives formal recognition to a term that already exists in practice.

Subsection (2) states the principle that there should be a one-to-one correlation between registered plots and title sheets, with the title number for each title sheet being the same number as the cadastral unit number for that plot. There are certain exceptions of which the most important is contained in subsection (6) which allows registered leases to have their own title sheets, even though a lease is not a plot.

Subsection (3) provides that title sheets are to comprise the same four textual sections as at present, the only change being that what is currently called the charges (C) section becomes the securities section (see recommendation 1, third paragraph.) Under the current Rules the title plan forms part of the property (A) section of the title sheet but in the new conceptual approach the cadastral mapping is regarded to be a separate part of the register: paragraph 4.17 of the Report. Subsection (4) allows Rules to prescribe that title sheets may contain further sections and subsection (5) permits the Keeper to subdivide sections. These provisions are intended to allow a degree of flexibility.

Subsection (6) is the most significant exception to the principle that there is to be a one-to-one correlation between registered plots and title sheets. This is that a registered lease can have its own separate title sheet. Such title sheets are to be known as lease title sheets. Their title number will differ from the cadastral unit number of the underlying plot or plots. Subsection (7) provides that these title numbers are to appear on the Cadastral Map. See paragraphs 9.32 to 9.35 of the Report and recommendation 40.

Subsection (8) relates to shared plots that are too small to be readily mappable and should be read in conjunction with section 4(4).

6 What is entered or incorporated by reference in a title sheet

- (1) There are to be entered in a title sheet, in addition to what is to be entered under sections 7 to 10, the matters mentioned in subsection (5).
- (2) There may be incorporated by reference in a title sheet—
 - (a) a document in the archive record, or
 - (b) a deed in a register (other than the Land Register of Scotland) under the management and control of the Keeper or of the Keeper of the Records of Scotland.
- (3) But the Keeper is not to enter in a title sheet any rights or obligations except in so far as their entry is authorised by an enactment.
- (4) And entry of rights or obligations in a title sheet (whether or not such entry is by virtue of incorporation as mentioned in subsection (2)) is, in so far as not so authorised, without effect.
- (5) The matters are—
 - (a) any statement made by virtue of any of subsections (3) to (6) of section 39,
 - (b) particulars of any special destination,
 - (c) a reference to an entry in the Register of Inhibitions if it is an entry by virtue of which a change to the title sheet might come to be made,

- (d) the terms of any caveat, and
 - (e) such other information (if any) as the Keeper thinks fit to enter.
- (6) Subsection (5)(b) is subject to sections 16(3)(a) and to paragraph 3(a) of schedule 1.

NOTE

Section 6 and the following four sections detail what must, may and may not be entered into title sheets. The provisions of section 6 are applicable to all four sections of a title sheet.

Sometimes the text or part of the text of a deed needs to be included in a title sheet. Subsection (2) allows that to be done by reference rather than by copying out, provided that the deed is in the Archive Record or certain other public registers. This matches what Registers of Scotland currently calls "copy in certificate", but puts that practice for the first time on a proper statutory footing. The other public registers are those under the management and control of the Keeper of the Registers – the Register of Sasines being most relevant - and those under the management and control of the Keeper of the Records of Scotland.

Subsection (3) provides that the Keeper is not to enter into a title sheet any rights or obligations except where this is permitted under an enactment. This implements recommendation 3: see paragraphs 4.25 to 4.31 of the Report. Subsection (4) provides that if the Keeper erroneously enters in a title sheet some right or obligation, the entry has no effect. For example, were the Keeper to erroneously enter a purely contractual right, the effect of that entry would not convert that into a right running with the land. Any such entry would be an inaccuracy in the register which the Keeper should remove by rectification under Part 7 as and when it comes to light.

Subsection (5) lists matters that are to be included but which are not specific to any particular section of the title sheet. Paragraph (a) is about statements concerning the Keeper's warranty. Paragraph (b) is about special destinations. (This corresponds to the Land Registration (Scotland) Rules 2006, rule 5(d). But that rule is limited to the B section. In theory at least special destinations might also appear in the C section.) Paragraph (c) is about inhibitions and other entries in the Register of Inhibitions. (See Part 30 of the Report.) Paragraph (d) is about caveats, which give warning of pending litigation concerning the title. (See Part 32 of the Report.) Paragraph (e) is "information". But rights and obligations could not be included under this heading, for no rights and obligations can be entered except as may be authorised by an enactment: see above. An example of information that could be included is price. Subsection (6) makes exceptions to the requirement placed upon the Keeper to enter special destinations into title sheets. These relate to shared plot and shared leased area title sheets (in which sharing plot or lease title numbers appear instead of proprietors' or tenants' names). Section 6 does not mention occupancy rights, and to that extent follows the 1979 Act. See paragraphs 4.32 and 4.33 of the Report.

7 The property section of the title sheet

- (1) There are to be entered in the property section of the title sheet—
- (a) a description—
 - (i) of the plot of land (being a description by reference to the cadastral map), and
 - (ii) if the plot is a separate tenement, of the nature of the tenement,
 - (b) the particulars of any incorporeal pertinents (including, if there is a burdened property, the particulars of that property in so far as known),
 - (c) any entry falling to be made by virtue of section 14(3),
 - (d) any entry required under section 16(4)(b) or paragraph 4(b) of schedule 1,
 - (e) any entry required under section 29(4),

- (f) if the title sheet is a lease title sheet, the particulars of the lease, and
 - (g) where there is for the area of land another title sheet (as for example for a plot which is a separate tenement), the title number of that other title sheet.
- (2) Rules under section 95(1)(a) may provide that the description mentioned in paragraph (a) of subsection (1) is to include such further information as may be specified in those rules.
 - (3) Paragraph (b) of subsection (1) does not apply to incorporeal pertinents subsisting by virtue of a section mentioned in section 79(1).
 - (4) In paragraph (g) of that subsection, “separate tenement” does not include a flat in a tenement.
 - (5) Expressions used in this section and in either or both of sections 26 and 29 of the Tenements (Scotland) Act 2004 (asp 11) have the same meanings in this section as in that Act.

NOTE

Section 7 sets out what is to be included in the property section (A section) of a title sheet. Subsection 1(a)(i) requires a description of the plot by reference to the Cadastral Map. Whereas title sheets made up under the 1979 Act refer to the title plan which forms part of each title sheet (eg "subjects 15 Main Street Broxburn edged red on the title plan..."), in the new scheme the mapping is a separate part of the register and therefore a different type of reference will be needed (eg "subjects 15 Main Street, Broxburn, being cadastral unit number WLN1234568 ...").

Paragraph (b) of subsection (1) requires the entry of any incorporeal pertinents, ie rights, that benefit the plot, such as the benefit of real burdens or servitudes. The benefit of servitudes should be included regardless of how the servitude has come into being. Thus a servitude constituted by prescriptive use should be included. Where the identity of the burdened property is known, that too is to be entered. (As a result of the dual registration rules of the Title Conditions (Scotland) Act 2003, the identity of the burdened property is increasingly likely to be known.) The Keeper will not necessarily be aware of the existence of a pertinent. If a pertinent is omitted, the register is to that extent inaccurate and the Keeper must rectify the register by entering the pertinent, provided that the evidence of the existence of the pertinent is supported by "manifest" evidence: see section 54.

Paragraphs (c) to (e) require entry into the property section of alluvion agreements (see section 14), and certain other matters. Paragraph (f) requires, in a lease title sheet, entry of particulars of the lease. Paragraph (g) requires cross references between title sheets relating to the same geographical area such as between principal plot title sheet and minerals title sheet, or principal plot title sheet and lease title sheet.

Subsection (2) permits rules to be made giving more specification of the property description to be included in the property section. For example, rules could specify that the postcode must be included.

8 The proprietorship section of the title sheet

- (1) There are to be entered in the proprietorship section of the title sheet—
 - (a) the name and designation of the proprietor, and
 - (b) in the case of ownership in common, the respective shares of the proprietors.
- (2) Paragraph (a) of subsection (1) is subject to section 16(3)(b) and to paragraph 3(b) of schedule 1; and paragraph (b) of that subsection is subject to sections 15(2), 16(4)(a) and 29(5)(b), to paragraph 4(a) of schedule 1 and to paragraph 10 of schedule 6.

NOTE

Section 8 specifies what is to be included in the proprietorship section (B section) of a title sheet. This is the name and designation of the proprietor. Designation is defined at section 92(1) to include the date of birth in the case of a natural person and company number and like identifiers for juristic persons. See paragraphs 4.18 to 4.24 of the Report, and recommendation 2. For property owned in common (as opposed to jointly) the respective *pro indiviso* shares of the proprietors are also to be given.

9 The securities section of the title sheet

- (1) There are to be entered in the securities section of the title sheet particulars of any heritable security over the right in land (including the name and designation of the creditor in the security).
- (2) This section is subject to paragraph (d) of section 16(3) and to paragraph 3(d) of schedule 1.

NOTE

Section 9 provides that the C section of a title sheet is to contain details of any heritable security relating to the plot or lease. This section of the title sheet is, under current law, called the charges section but under the draft Bill is called the securities section. The name and designation of the creditor is to be given.

10 The burdens section of the title sheet

- (1) There are to be entered in the burdens section of the title sheet—
 - (a) where the right in land is encumbered with a title condition—
 - (i) the terms of the title condition
 - (ii) a description of any benefited property (in so far as known to the Keeper), and
 - (iii) if the title condition is a personal real burden, the name and designation of the person who has title to enforce it,
 - (b) any long lease, other than a long sub-lease, which has real effect (or where the title sheet relates to a long lease, any long sub-lease, other than a long sub-sub-lease, which has real effect),
 - (c) any public right of way (by whatever means) over or through the land,
 - (d) particulars of any path order made under section 22 of the Land Reform (Scotland) Act 2003 (asp 2) (compulsory powers to delineate paths in land in respect of which access rights are exercisable), and
 - (e) any other encumbrance the inclusion of which in the register is permitted, expressly or impliedly, by an enactment and the name and designation of the person who has title to enforce that encumbrance.
- (2) In subsection (1)—

“encumbrance” does not include a heritable security,
“long lease” means (“long sub-lease” and “long sub-sub-lease” being construed accordingly)—

 - (a) a lease exceeding 20 years, or

- (b) a lease subject to a provision whereby any person holding the right of the grantor is under a future obligation to renew the lease, at the grantee's request, so that (in terms of the lease as renewed, and without any subsequent agreement express or implied between the persons for the time being holding, respectively, the rights of the grantor and the grantee) the total duration could exceed 20 years, and

“title condition”, “benefited property” and “personal real burden” are to be construed in accordance with section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9) (interpretation).

- (3) This section is subject to section 16(5).

NOTE

Section 10 details what is to be included in the burdens section (D section) of a title sheet. The provisions are fairly self-explanatory. The section does not simply say that all encumbrances are to be entered; for example short leases are not included.

As in the case of pertinents, the Keeper will not necessarily be aware of all encumbrances affecting a property. In the event that an encumbrance is not entered, the register is to that extent inaccurate and the Keeper must rectify the register by entering the encumbrance, provided that the evidence of the existence of the encumbrance is supported by "manifest" evidence: see section 54. This applies only to encumbrances that ought to have been entered. For example a short lease cannot competently be entered, so its omission would not be an inaccuracy.

11 Further provision as regards the title sheet record

- (1) The Keeper is to ensure that the title sheet record is searchable in relation to every person who is named in it as—
 - (a) a proprietor,
 - (b) a proper liferenter, or
 - (c) a heritable creditor.
- (2) The Keeper may provide for the title sheet record to be searchable in such further manner as the Keeper may determine.

NOTE

Section 11 is about the searchability of the Title Sheet Record and is fairly self-explanatory.

12 The archive record

- (1) There is to be maintained, as part of the register, an archive (to be known as the “archive record”) of—
 - (a) copies of all documents submitted to the Keeper and relevant to the accuracy of the register, and
 - (b) copies of such other documents as the Keeper thinks fit to include or is, by rules under section 95(1)(a), required to include.
- (2) There is to be included in the archive record such information as it is requisite to keep for the purposes of section 70.
- (3) But the Keeper need not include in the archive record a copy of—

- (a) any enactment, or
 - (b) any document comprised in a register (other than the Land Register of Scotland) under the management and control of the Keeper or of the Keeper of the Records of Scotland.
- (4) The Keeper is to ensure that the archive record is searchable—
- (a) by date of application,
 - (b) by title number,
 - (c) in relation to every person who has at any time been named in a title sheet as—
 - (i) a proprietor,
 - (ii) a proper liferenter, or
 - (iii) a heritable creditor, and
 - (d) in such other manner (if any) as may be prescribed by rules under section 95(1)(a).
- (5) The Keeper may provide for the archive record to be searchable in other ways.
- (6) A fact which can be discovered from the archive record is not, by reason only of that circumstance, a fact which a person ought to know.

NOTE

Section 12 details what is to be included in the Archive Record, namely those documents which vouch the accuracy of the register such as, for example, registered dispositions together with such further documents as the Keeper thinks fit to include and anything else required by rules to be included. An exception is made for enactments and also for other material that is in any event publicly archived by reason of inclusion in certain other public registers.

Like the Title Sheet Record, the Archive Record is to be searchable by the names of person who have been registered as proprietors, proper liferenters and heritable creditors (see recommendation 7). The current *de facto* Archive Record is not searchable in this way and schedule 6 paragraph 23 makes an exception for pre-designated day archive material. The Archive Record is also to be searchable by application date and title number and as provided for in rules.

Subsection (6) implements recommendation 5 (paragraph 4.36 of the Report), ensuring that although the Archive Record becomes an official 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".

13 The application record

- (1) There is to be maintained, as part of the register, a record (to be known as the "application record") of all—
- (a) applications for registration as are for the time being pending, and
 - (b) advance notices as are for the time being extant.
- (2) The Keeper is to ensure that the application record is searchable—
- (a) by date of application,
 - (b) by title number, and
 - (c) in such other manner (if any) as may be prescribed by rules under section 95(1)(a).

- (3) The Keeper may provide for the application record to be searchable in other ways.

NOTE

Section 13 provides that the Application Record is to contain all pending applications for registration. This represents the current *de facto* position. Also the Application Record is to contain advances notices entered under Part 4 of the draft Bill. The Application Record is to be searchable by date of application and by title number and in such other ways as may be prescribed by rules or as the Keeper thinks fit.

Further provisions

14 Shifting boundaries

- (1) If alluvion affects the boundary of a plot of land the cadastral map becomes inaccurate to the extent of the effect.
- (2) But adjacent proprietors may agree that their common boundary (or part of their common boundary) is not to be affected by alluvion.
- (3) And if the agreement is registered in the title sheets of both plots of land then alluvion occurring after registration has no effect on the boundary (or part) in question.

NOTE

Section 14 implements recommendations 21(a) and 22 by providing that adjacent proprietors bounded by a water boundary may, by registered agreement, provide that subsequent change to the physical boundary by process of alluvion should have no effect on the title boundary. See paragraphs 5.33 to 5.35 of the Report.

15 Tenements

- (1) A tenement may be depicted as a steading (that is to say, as a site of single extent in the cadastral map); and if it is so depicted then the map is to show the title number of each registered flat.
- (2) The respective *pro indiviso* shares in the pertinents of the registered flats need not be quantified in the proprietorship section of the title sheet of any of those flats.
- (3) But subsections (1) and (2) do not apply as respects land which is further than 25 metres from the tenement building (measuring along a horizontal plane from whatever point of that building is nearest to the land).
- (4) Expressions used in this section and in either or both of sections 26 and 29 of the Tenements (Scotland) Act 2004 (asp 11) have the same meanings in this section as in that Act.

NOTE

Tenement flat titles present a special case, discussed at paragraphs 5.19 to 5.23 of the Report. Section 15 implements recommendations 16 and 17, permitting such titles to be mapped – as they commonly are at present – by the "steading" technique, so long as the title includes no land which is more than 25 metres from the tenement building.

16 Shared plots

- (1) If the Keeper thinks fit, the title sheet of a plot of land owned in common by the proprietors of two or more other plots of land (and by no-one else) may be constituted as a "shared plot title sheet".

- (2) In the following provisions of this section, references to a “shared plot” are to a plot of land the title sheet of which is so constituted; and references to the “sharing plots” are to the other plots of land owned by the proprietors of the shared plot.
- (3) There is to be included in the property section of the title sheet of each of the sharing plots the shared plot number; and the shared plot title sheet is to differ as follows from the title sheets of plots of land generally (that is to say, from “ordinary” title sheets)—
 - (a) no entry is to be made by virtue of paragraph (b) of section 6(5) in the shared plot title sheet
 - (b) there is to be entered in the proprietorship section of the shared plot title sheet, instead of the information required by paragraph (a) of section 8(1), the sharing plot numbers,
 - (c) there is to be entered—
 - (i) in the securities section of the shared plot title sheet, a statement to the effect that the shared plot may be subject to a heritable security registered against a sharing plot, and
 - (ii) in the burdens section of that title sheet, a statement to the effect that the shared plot may be subject to some other encumbrance so registered, and
 - (d) no entry is to be made under section 9(1) in the securities section of the shared plot title sheet.
- (4) Where the title sheet of a plot of land is constituted as a shared plot title sheet—
 - (a) an entry under section 8(1)(b) is to be made in the proprietorship section of the shared plot title sheet, and
 - (b) the quantum of the share which the proprietor of a sharing property has in the shared plot is to be entered in the property section of the title sheet of that sharing plot.
- (5) If the Keeper thinks fit and provided that the condition mentioned in subsection (6) is satisfied, there may be omitted from the burdens section of the shared plot title sheet any entry which would otherwise be required under section 10(1).
- (6) The condition is that the encumbrance to which the entry would relate is (or falls to be) registered against each of the sharing plots.
- (7) A shared plot title sheet may be converted at any time by the Keeper into an ordinary title sheet.
- (8) Where any such conversion takes place, the Keeper is to make such changes to the title sheets of the sharing plots as are consequential upon the conversion.
- (9) Unless the context otherwise requires, any reference in a document to a sharing plot is to be taken to include a reference to the share in the shared plot which attaches to the sharing plot.
- (10) Registration has the same effect in relation to the share in a shared plot which attaches to a sharing plot as it has in relation to the sharing plot (except in so far as may otherwise be provided in the deed registered).
- (11) Schedule 1 has effect in relation to areas of land tenanted in common.

NOTE

The draft Bill requires each plot to have its own title sheet. That does not always happen under current law. For example, an amenity area belonging to a group of 20 houses would, under current law, typically be included in the title sheets of all 20 houses. The draft Bill requires it to have its own title sheet, though schedule 6 relaxes the rule for existing developments. At the Keeper's discretion, there may be either (i) an ordinary title sheet for the plot, or (ii) a "shared plot title sheet". The reason for this discretion is that an ordinary title sheet is likely to be administratively inconvenient unless the number of co-owners is very small. Every time that there is a transaction involving one of the sharing properties, the title sheet of the shared property would have to be changed as well. The purpose of a "shared plot title sheet" is to allow the Keeper to set up the title sheet of the shared property in such a way that transactions involving the sharing properties would not normally trigger any alterations to the shared property's title sheet. If the Keeper opts for this approach, the title sheet is called a "shared plot title sheet" and the other title sheets are the "sharing plot title sheets". Section 16 deals only with this way of handling common areas. If the Keeper creates an ordinary title sheet for a common area, section 16 would be irrelevant. See generally paragraphs 6.7 to 6.9 of the Report, and recommendation 26.

In a shared plot title sheet the proprietorship section (B section) does not name the proprietors. Instead, it simply identifies the sharing properties. Hence if ownership of one of the sharing properties changes hands, no alteration to the shared plot title sheet is needed.

If missives, or a disposition, or other document, refer to a sharing plot, then it is to be presumed that the reference includes by implication a reference to the shared plot: see subsection (9). For example, suppose that there are 20 properties in Montana Circus and there is a co-owned amenity area. The latter is represented by a shared plot title sheet. If missives are concluded for the sale of "1 Montana Circus" then that property's share of the amenity area is by implication included. (That might be the case anyway if the amenity area is classifiable as a corporeal pertinent. But section 16(9) operates independently from the concept of a corporeal pertinent.)

Similar issues can arise for registered leases, and schedule 1 provides a matching regime for such leases. See paragraph 6.10 of the Report, and recommendation 27.

PART 3

REGISTRATION

General provisions

17 Competence and effect of registration

- (1) Registration of a deed—
 - (a) is competent only if and in so far as authorised by an enactment, and
 - (b) has the effect accorded by an enactment (whether or not expressly accorded and whether or not that enactment is the authorising enactment).
- (2) Accordingly, registration of an invalid deed confers real effect only to the extent that an enactment so provides.

NOTE

Part 3 of the draft Bill is about the registration of transactions relating to registered land. See generally Parts 12 and 13 of the Report. This part is about applications relating to plots which are already registered, but to a substantial extent its provisions also apply to first registrations. For the latter see Part 8 of the draft Bill.

Section 17 implements recommendation 47(a) and recommendation 62. See paragraphs 12.7 to 12.17 and Part 13 of the Report. Given that section 3 of the 1979 Act gives registration the "Midas" effect of creating

rights from invalid deeds (see Part 13 of the Report), subsection (2) makes it clear that under the draft Bill the registration of an invalid deed will not result in a right unless an enactment specifically so provides. The realignment provisions in Part 6 of the Bill are an example of such provision.

18 Order in which applications are to be dealt with

- (1) Two or more applications in relation to the same land are to be dealt with in order of receipt.
- (2) Subsection (1) is subject to section 24.

NOTE

Section 18, implementing recommendation 51, is self-explanatory. See paragraph 12.41 of the Report. The rule is in fact already observed by the Keeper in practice, though the 1979 Act and current rules are silent on the matter.

19 Receipt of application

- (1) On receipt of an application for registration, the Keeper is—
 - (a) forthwith, or
 - (b) if the application record is not open for the making of entries, forthwith on the application record next opening for that purpose,to enter in the application record details of the application (including the date the entry under this subsection is made).
- (2) No such entry need be made however if, on receipt of the application, it is immediately apparent to the Keeper that the application falls to be rejected.
- (3) Any reference in this Act, however expressed, to the date of an application is a reference to the date an entry in respect of the application falls to be made (or but for subsection (2) would fall to be made) under subsection (1).
- (4) On an application being—
 - (a) withdrawn,
 - (b) accepted by the Keeper, or
 - (c) rejected by the Keeper,the entry relating to it is to be removed from the application record.

NOTE

Section 19 provides that on receipt of an application the Keeper is to enter details of it into the Application Record. Where the Application Record is not open at the time of receipt – see paragraphs 12.31 and 12.32 of the Report – the application is to be entered into the Application Record forthwith when it next opens. For example, if an application is received on a Sunday, it should be entered into the Application Record on Monday. Subsection (4) provides that the Keeper is to remove from the Application Record applications which are no longer pending by reason of having been accepted, rejected, or withdrawn.

20 Acceptance or rejection of application

- (1) A competent application for registration is to be accepted by the Keeper to the extent the applicant satisfies the Keeper that, as at the date of application, the conditions set out in subsection (3) are met.
- (2) To the extent the applicant does not so satisfy the Keeper the application falls to be rejected; but subsection (1) and this subsection are subject to subsection (6) and to sections 21(10), 29(5) and 31(4).
- (3) The conditions are that—
 - (a) the deed sought to be registered either—
 - (i) is valid, or
 - (ii) is a deed to which subsection (1) or (3) of section 21 applies,
 - (b) the application is such that the Keeper is able to comply, in respect of it, with such duties as the Keeper has under Part 2,
 - (c) the deed sought to be registered—
 - (i) narrates the title number of each title sheet to which the application relates (except that where the title number of the title sheet of a sharing plot is narrated in the deed this sub-paragraph does not also require that the title number of the title sheet of the shared plot is so narrated), and
 - (ii) in so far as it relates to part only of a plot of land or of the subjects of a lease, so describes the part as to enable the Keeper to delineate in the cadastral map the boundaries of the part,
 - (d) the deed sought to be registered does not relate to a souvenir area,
 - (e) the application does not fall to be rejected by virtue of section 10A of the Requirements of Writing (Scotland) Act 1995 (c.7) (registration of document) or of a prohibition in an enactment,
 - (f) where a form of application is prescribed, in or by virtue of rules under section 95(1)(d), for an application of the kind in question, the form in which the application is made is the prescribed form, and
 - (g) either—
 - (i) such fee as is payable for registration is paid, or
 - (ii) arrangements satisfactory to the Keeper are made for payment of that fee.
- (4) Sub-paragraph (ii) of subsection (3)(c) is to be disregarded if the part to which the deed relates is a flat in a tenement (disregarded, that is, except in so far as the part includes a pertinent outwith the tenement building, being a pertinent only of the part) and either—
 - (a) the tenement is, by virtue of section 15(1), depicted as a steading in the cadastral map, or
 - (b) the Keeper has indicated that the tenement is, by virtue of that section, to be so depicted.
- (5) And in the case of any application which relates to registration to create as a servitude a right to lead a pipe, cable, wire or other such enclosed unit over or under land, the condition set out in that sub-paragraph is to be disregarded.
- (6) While an application is pending, the applicant—

- (a) may withdraw it, but
 - (b) except with the consent of the Keeper, may not amend, amplify or supplement it.
- (7) Without prejudice to the generality of paragraph (b) of subsection (6), rules made under section 95(1)(b) may specify circumstances in which consent under that paragraph is to be given.
- (8) In subsection (3)(d), “souvenir area” means an area of land which—
- (a) is of inconsiderable size and of no practical utility, and
 - (b) is not a registered plot.
- (9) This section does not apply to an application made under Part 8.

NOTE

Section 20 sets out the criteria to be applied by the Keeper in reaching a decision whether to accept (ie register) or reject an application. This implements recommendations 52, 53 and 54. See paragraphs 12.42 to 12.59 of the Report. Subsection (6) implements recommendation 56 relating to the "one shot rule". See paragraphs 12.71 to 12.77 of the Report. Subsections 3(d) and (8) implement recommendation 58 regarding souvenir plots. For souvenir plots, see paragraphs 12.82 to 12.85 of the Report.

21 Prescriptive claimants

- (1) This subsection applies to a disposition sought to be registered where—
- (a) it appears to the Keeper that, for the reason only that the person who granted it had no title to do so, the disposition is not valid (or as regards part of the land to which the application relates is not valid), and
 - (b) the applicant satisfies the Keeper—
 - (i) that for a continuous period of 7 years immediately preceding the date of application the land to which the application relates (or as the case may be the part in question) has not been possessed by the proprietor or by any person in right of the proprietor, and
 - (ii) that the land (or part) has been possessed openly, peaceably and without judicial interruption by the disponer or by the applicant for a continuous period of one year immediately preceding the date of application (or first by the disponer and then by the applicant for periods which together constitute a continuous period of one year immediately preceding that date).
- (2) A person whose name is entered—
- (a) as proprietor, in the proprietorship section of a title sheet, on an application being accepted by virtue of—
 - (i) subsection (1), and
 - (ii) either section 20(3)(a)(ii) or section 59(4)(a)(ii), or
 - (b) as holder of a right, in the appropriate section of a title sheet, the entry in relation to the right being one marked “provisional” under section 54(5)(b),
- is to be known as a “prescriptive claimant” as is any person in right of that person.

- (3) This subsection applies where—
 - (a) a deed sought to be registered is granted by or is directed against a prescriptive claimant, and
 - (b) the application for registration would be accepted were the prescriptive claimant's title valid.
- (4) Any entry made in the title sheet on an application being accepted by virtue of subsection (1) or (3) and either section 20(3)(a)(ii) or section 59(4)(a)(ii) is (and is to be marked) “provisional”.
- (5) An entry ceases to be provisional and the person to whom it relates (“A”) ceases to be known as a prescriptive claimant if and when A's real right becomes, under section 1A(2) or 1B(2) of the Prescription and Limitation (Scotland) Act 1973 (c.52) (validity of right), exempt from challenge.
- (6) When an entry ceases to be provisional it is to cease to be marked “provisional”.
- (7) While an entry remains provisional—
 - (a) it does not affect any right held by any person in the land, and
 - (b) rights set out in the register are not to be altered or deleted by virtue only of the entry.
- (8) Subsections (9) to (12) apply in relation to any application which—
 - (a) relates to land mentioned in paragraph (b) of the definition of “land” in section 92(1), and
 - (b) is received by virtue of subsection (1).
- (9) In so far as appears to the Keeper to be reasonably practicable and by such means as the Keeper considers appropriate, the Keeper is, before accepting the application, to give notice of its receipt to—
 - (a) the proprietor,
 - (b) if there is no proprietor (or none can be identified), any person who appears to the Keeper able to take steps to complete title as proprietor, or
 - (c) if there is no proprietor and no such person (or, in either case, none can be identified), the Crown.
- (10) If, within 30 days after notice is given under subsection (9), the Keeper receives, from any of those to whom it was given, an objection in writing to the application being accepted then the application falls to be rejected.
- (11) Subsection (9) is subject to the provisions of any rules made under section 95(1)(g) or (h).
- (12) In subsection (10), “writing” includes writing transmitted or communicated electronically.
- (13) After consultation with the Keeper the Scottish Ministers may, by order made by statutory instrument (either or both)—
 - (a) amend sub-paragraph (i) or (ii) of subsection (1)(b) so as to provide for a different continuous period from that for the time being mentioned in the sub-paragraph in question,
 - (b) amend subsection (10) so as to substitute a different number of days for the number of days for the time being mentioned in that subsection.

NOTE

Section 21 deals with a special case: applications based on a disposition that is known to the Keeper to be an *a non domino* deed. See Part 16 of the Report. The new term "prescriptive claimant" is used to describe the disponee of such a disposition. It is also used to cover the grantee of a deed granted by such a disponee before the title has been validated by prescription. (A third variety of prescriptive claimant occurs where a deed has been accepted under section 20 in the belief that it is valid but it then emerges that it was in fact invalid: here section 54(5) interacts with section 21.) In addition to having to satisfy the normal criteria for acceptance of an application (see section 20(3)), an application for registration of an *a non domino* disposition must satisfy the Keeper both that the applicant (or predecessor) has been in possession for a year and that the true owner has been out of possession for at least seven years: see recommendation 69 (paragraph 16.21 of the Report).

Section 21 also explains when a provisional entry ceases to be provisional and how the Keeper is to reflect this in the register, and contains provisions about giving notification of *a non domino* applications to the true owner and the Crown (see paragraphs 16.22 to 16.25 of the Report.)

22 Completion of registration other than by virtue of Part 8

- (1) On accepting an application the Keeper is forthwith to—
 - (a) make such changes to the title sheet, or each of the title sheets, to which the application relates as are requisite,
 - (b) make such other changes (if any) to the title sheet record as are requisite,
 - (c) make such changes (if any) to the cadastral map as are requisite, and
 - (d) copy into the archive record—
 - (i) the deed being given effect to by registration, and
 - (ii) any other document which has been submitted to the Keeper and is relevant to the accuracy of the register.
- (2) Subsection (1)(d)(ii) is subject to section 12(3).
- (3) Changes under paragraph (a) or (b) of subsection (1) may, without prejudice to the generality of those paragraphs, include—
 - (a) cancelling a title sheet and cadastral unit, or
 - (b) creating a new title sheet and cadastral unit.
- (4) This section does not apply where registration is by virtue of Part 8.

NOTE

Where the Keeper has decided to accept a registration application under section 20, or under sections 20 and 21 together, section 22 details how registration is to be completed. In substance it places current registration practice on a statutory basis.

23 Date and time of registration

- (1) Where the Keeper—
 - (a) accepts an application, the date of registration is the date of the application,
 - (b) rejects an application, an applicant successful on appeal against the rejection may apply anew and (provided that the Keeper accepts the new application) the date of registration is the date of the new application.

- (2) The time of registration is deemed to be the moment at which, following the application (or as the case may be the new application) being received by the Keeper, the application record next ceases to be open for the making of entries.
- (3) After consultation with the Keeper, the Scottish Ministers, by order made by statutory instrument—
 - (a) may amend subsection (2) so as to make different provision as regards time of registration, and
 - (b) if so amending that subsection, may make such other amendments to this Act as are consequential upon that amendment to that subsection.

NOTE

Section 23 provides that where an application is accepted, the date of registration is to be considered as being the date of application (which is determined by section 19(3)). This implements recommendation 49. See paragraphs 12.23 to 12.26 of the Report. Subsection (2) implements recommendation 50(1) as to the deemed time of registration within that day. See paragraphs 12.27 to 12.39 of the Report.

24 Simultaneity

- (1) This section applies as regards any two applications received on the same date in relation to the same land.
- (2) Subsections (3) and (4) apply where to accept one of the applications would require the Keeper to reject the other.
- (3) Priority is to be assigned according to which is first received; and in the absence of evidence to the contrary the order of receipt is to be taken to be the order in which the details of the applications were entered in the application record.
- (4) Except that one application (“application A”) is to be taken to be received before the other (“application B”) where—
 - (a) the deed to which application A purports to give effect is a deed in relation to which a protected period is running, and
 - (b) the deed to which application B purports to give effect either—
 - (i) is not such a deed, or
 - (ii) is such a deed but the advance notice relating to the deed to which application A purports to give effect is entered in the application record before the advance notice relating to the deed to which application B purports to give effect.
- (5) Where—
 - (a) both applications are accepted,
 - (b) the deed to which one of them (application “C”) purports to give effect is a deed in favour of a person (“X”), and
 - (c) the deed to which the other (application “D”) purports to give effect is a deed granted by X,
 application C is to be taken to be received before application D.

NOTE

This section deals in the first place with the situation (in practice highly unusual) where two competing deeds are received for registration on the same day. Unless an advance notice gives one or other priority, the deeds are to be regarded as received in the actual order of receipt if this is known by the Keeper. If not so known, they are to be treated as having been received in the order in which they have been entered into the Application Record. See paragraphs 12.34 and 12.35 of the Report and recommendation 50(3). Subsection (5) deals with the situation where two compatible and related deeds are received on the same day. See paragraphs 12.37 and 12.38 of the Report and recommendation 50(4).

25 Notification of acceptance, rejection or withdrawal of application

- (1) In so far as the Keeper considers it reasonably practicable to do so and by such means as the Keeper considers appropriate, on an application being—
 - (a) accepted or rejected the Keeper is to notify accordingly—
 - (i) the applicant,
 - (ii) the granter of the document sought to be registered,
 - (iii) if notification of receipt of the application was given under section 21(9), those to whom it was given, and
 - (iv) if the Keeper thinks fit, any other person,
 - (b) withdrawn the Keeper is to notify accordingly—
 - (i) the granter of the document which had been sought to be registered,
 - (ii) if such notification as is mentioned in paragraph (a)(iii) was given, those to whom it was given, and
 - (iii) if the Keeper thinks fit, any other person.
- (2) Subsection (1) is without prejudice to section 82 and is subject to the provisions of any rules made under section 95(1)(g) or (h).
- (3) A failure to comply with subsection (1) or with any rules so made does not affect the competence or validity of the acceptance, rejection or withdrawal in question.

NOTE

This section provides that, on accepting or rejecting an application, the Keeper is to notify the applicant and also the granter of the deed that it has been registered, or as the case may be, rejected. Granters are also to be notified where an application is withdrawn. A delegating power permits further details about notification to be prescribed in rules. Subsection (3) provides that any failure in notification does not affect the validity of the acceptance, rejection or withdrawal in question. See paragraphs 12.113 to 12.118 of the Report and recommendation 61.

26 Period within which decision must be made as to acceptance or rejection of an application

- (1) The Keeper's decision as to whether to accept or reject an application must be made within such period as may be prescribed in rules under section 95(1)(k).
- (2) Different periods may be so prescribed for different kinds of application.
- (3) It is the Keeper's duty to deal with an application without unreasonable delay.

NOTE

Subsection (3) places the Keeper under a duty to deal with registration applications without unreasonable delay. This duty is similar to that which exists for the Register of Sasines under section 142 of the Titles to Land Consolidation (Scotland) Act 1868. Subsections (1) and (2) permit the Scottish Ministers to prescribe maximum periods within which the Keeper must make the accept/reject decision, with it being possible for different periods to be set for different kinds of application. By virtue of section 95(1), Ministers must consult with the Keeper before prescribing any such periods. See paragraphs 12.86 to 12.99 of the Report and recommendation 59.

27 Duties of certain persons

- (1) It is the duty of—
 - (a) a person granting a deed intended to be registered,
 - (b) a person who, in connection with the granting of such a deed, acts as solicitor or other legal adviser to the granter,
 - (c) a person making an application for registration,
 - (d) a person who, in connection with an application for registration, acts as solicitor or other legal adviser to the applicant,

being in each case a duty owed to the Keeper, to take reasonable care to ensure that the Keeper, by a change resulting from the grant mentioned in paragraph (a) or as the case may be from the application mentioned in paragraph (c), does not inadvertently make the register inaccurate.

- (2) The duties mentioned in—
 - (a) paragraphs (a) and (b) of subsection (1) subsist until delivery of the deed,
 - (b) paragraphs (c) and (d) of that subsection subsist until the application is delivered to the Keeper.

NOTE

Section 27 implements recommendation 60, which is discussed at paragraphs 12.101 to 12.107 of the Report. The section provides that certain persons owe a duty of care to the Keeper, the duty being to not cause the Keeper to make the register inaccurate. The word "inadvertently" refers to the Keeper's actions, and is included to make it clear that if the Keeper were for some reason intentionally to make the register inaccurate, that would be outwith the duty of care. The duty subsists, in the case of applicants and their advisers, until the application is delivered to the Keeper and, in the case of granters and their advisers, until delivery of the deed.

Further provisions

28 Effect of death or dissolution

- (1) An application is incompetent if the applicant died, or as the case may be was dissolved, before the date of the application.
- (2) An application is not incompetent by reason only that the person who granted the deed sought to be registered died, or as the case may be was dissolved, after the delivery of the deed.

NOTE

Section 28 is self-explanatory. For discussion, see paragraphs 12.78 to 12.81 of the Report and recommendation 57.

29 Provisional shared plots

- (1) The Keeper may, on the application of the proprietor of a plot of land (the “parent plot”), designate part of that plot (being a part the boundaries of which are for the time being unascertained) a “provisional shared plot”.
- (2) The Keeper is not to accept the application unless satisfied that the applicant intends—
 - (a) to dispense the parent plot, or part of the parent plot, as three or more plots of land, and
 - (b) that the provisional shared plot will be owned in common by the proprietors of the three or more plots.
- (3) If the application is accepted the Keeper is, as respects the provisional shared plot, to disregard the provisions of section 3(1)(c) but create for it a title sheet constituted as a “provisional shared plot title sheet”; and each such sheet is to be distinguished by a plot number.
- (4) There is to be included in the property section—
 - (a) of the title sheet of the parent plot, the title number of the provisional shared plot title sheet, and
 - (b) of the provisional shared plot title sheet, the title number of the title sheet of the parent plot.
- (5) An application for registration is not to be rejected by reason only that, in the deed sought to be registered (either or both)—
 - (a) the boundaries of a provisional shared plot are unascertained,
 - (b) the quantum of a provisional right in common to a provisional shared plot is unstated.
- (6) While a shared plot title sheet remains provisional, the quantum of the shares which the proprietors of the plots of land which are provisionally sharing plots (within the meaning of section 16(2)) have in the provisional shared plot need not be entered in—
 - (a) the proprietorship section of the provisional shared plot title sheet, or
 - (b) the property section of the title sheet of a plot of land which is provisionally a sharing plot.
- (7) Subject to the provisions of this section, section 16 applies in relation to a provisional shared plot title sheet and a title sheet of a plot of land which is provisionally a sharing plot as that section applies to a shared plot title sheet and a sharing plot title sheet.

NOTE

Section 29 and the two following sections give effect to the proposed new scheme of "provisional shared plot title sheets" (PSPTS) discussed in paragraphs 6.19 to 6.34 of the Report. Application for creation of a PSPTS sheet must be made to the Keeper by the proprietor of the land in question (ie the developer). The Keeper has discretion whether or not create the PSPTS but must not do so unless satisfied that there is an intention to create a development of three or more units. Because provisional shared plots are not mapped on the Cadastral Map, a PSPTS has, until ascertainment, a title number that does not correlate to a cadastral unit number. The cross-references between a PSPTS and the related provisional sharing plot titles

are the same as those between normal shared and sharing plot title sheets, except that in a PSPTS the developer can choose not to specify the quantum of *pro indiviso* share prospectively conveyed to each sharing proprietor until the ascertainment stage.

30 Entry in provisional shared plot title sheet

While a shared plot title sheet remains provisional—

- (a) an entry made in it (or in any of the sharing plot title sheets) does not affect any right held by any person in the land, and
- (b) rights set out in the register are not to be altered or deleted by virtue only of such an entry.

NOTE

Section 30 says, for avoidance of doubt, that the inchoate entries made in the register in relation to provisional shared plots do not affect any rights in land (the entries being incapable of having any real effect until ascertainment takes place), and that accordingly rights set out in the register are not to be altered in consequence of making entries relating to provisional shared plots.

31 Ascertainment deed

- (1) The proprietor of land for which there is constituted a provisional shared plot title sheet may grant, and make an application for the registration of, a deed in, or as nearly as may be in, the form set out in schedule 2.
- (2) Any such deed is to be known as an “ascertainment deed”.
- (3) In so far as the share of ownership allocated to a sharing plot has not already been quantified, the deed is to be sufficient to enable the Keeper to quantify the share.
- (4) In determining whether the application meets the conditions set out in paragraphs (a) to (g) of section 20(3) the modification mentioned in subsection (5) is to have effect.
- (5) The modification is that paragraph (c)(i) of section 20(3) does not require the inclusion of the title numbers of the title sheets of the sharing plots unless the ascertainment deed describes the shares of ownership allocated, other than as equal shares, to those plots.
- (6) On registration of the ascertainment deed—
 - (a) each sharing plot acquires as a pertinent a *pro indiviso* share of the shared plot, and
 - (b) both the shared plot and the shared plot title sheet cease to be provisional.
- (7) But registration of the ascertainment deed does not prejudice any right of a third party in the land.
- (8) In so far as any obligation to transfer ownership is not implemented by registration of the ascertainment deed it is not extinguished by such registration.
- (9) An application under subsection (1) is incompetent if a period of time exceeding 9 years has elapsed since the provisional shared plot title sheet was created; and the Keeper is to remove from the register any shared plot title sheet which is still provisional after that period of time.
- (10) After consultation with the Keeper the Scottish Ministers may, by order made by statutory instrument, amend subsection (9) so as to substitute a lesser number of years for the number of years for the time being mentioned in that subsection.

NOTE

This section makes provision as to the form, registration and effect of registration of ascertainment deeds. Schedule 2 gives a statutory form, which is to be followed as nearly as may be. The deed ascertains the extent and boundaries of the provisional shared area and, where the quantum of the provisional sharing proprietors' *pro indiviso* share has not previously been decided, must also ascertain the share. Application for registration is made by the proprietor of the provisional shared area, ie the developer or the developer's successor. Subsection (6) gives the substantive effect of registering an ascertainment deed, namely that ownership is transferred from developer (or developer's successor) to the proprietors for the time being of the (formerly provisional) sharing plots. The PSPTS then becomes a normal shared plot title sheet. However, subsection (7) makes it clear that ascertainment does not affect third parties' rights. For example, if the developer has granted a standard security over the shared area, the sharing proprietors will take ownership subject to that security. If a developer purports to ascertain land which it no longer owns, registration of the deed will not alter the ownership of that land.

Subsection (8) provides, for avoidance of doubt, that where registration of an ascertainment deed does not implement any obligation that a developer has undertaken (for example in missives), that obligation is not thereby extinguished. See paragraph 6.29 of the Report. Subsection (9) sets a 9-year time limit (variable by rules) for the making of an application for registration of an ascertainment deed after creation of the related provisional shared plot title sheet. See paragraph 6.26 of the Report.

32 Registration of decree of reduction

After section 46 of the Conveyancing (Scotland) Act 1924 (c.27) there is inserted—

“46A Further provision as regards decree of reduction

- (1) Subsection (2) below applies to a deed which—
 - (a) is voidable; and
 - (b) relates to a plot or lease registered in the Land Register of Scotland.
- (2) Where a deed to which this subsection applies is reduced, the decree of reduction—
 - (a) may be registered in that register, and
 - (b) does not have real effect until so registered.”.

NOTE

Section 32 inserts a new section 46A into the Conveyancing (Scotland) Act 1924, the effect of which will be that in future where a voidable deed is reduced, the decree does not, of itself, change real rights that have been entered in the Land Register. That being so, the decree does not, of itself, make the relevant entry in the Land Register inaccurate, and hence the decree is not given effect to by rectification. Instead the decree is given effect to by registering it. The real rights of the parties concerned thus change as of the date of the registration of the decree. See Part 28 of the Report.

33 Registration of order for rectification of document etc.

- (1) In section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) (rectification of defectively expressed documents)—
 - (a) in subsection (3), after the words “made to it” there is inserted “and after calling all parties who appear to it to have an interest”,
 - (b) after subsection (3) there is inserted—

- “(3A) If a document is registered in the Land Register of Scotland in favour of a person acting in good faith, then unless the person consents to rectification of the document it is not competent to order its rectification under subsection (3) above.”, and
- (c) in subsection (4), for the word “section” where it first occurs there is substituted “sections 8A(2) and”.
- (2) After section 8 of that Act there is inserted—
- “8A Registration of order for rectification**
- (1) Subsection (2) below applies to a document—
- (a) which has been registered in the Land Register of Scotland, and
- (b) in respect of which an order for rectification is made under section 8 of this Act.
- (2) The order for rectification—
- (a) may be registered in that register, and
- (b) has real effect (but not retrospectively) on registration.”.
- (3) In section 9 of that Act (provisions supplementary to section 8: protection of other interest)—
- (a) in subsection (2), the words “or on the title sheet of an interest in land registered in the Land Register of Scotland being an interest to which the document relates” are repealed,
- (b) after subsection (2) there is inserted—
- “(2A) This section does not apply where the document to be rectified is a deed registered in the Land Register of Scotland.”,
- (c) in subsection (3)—
- (i) in paragraph (a), the words “or (as the case may be) the title sheet”, and
- (ii) in paragraph (b), the words “or on the title sheet”,
- are repealed, and
- (d) subsection (6) is repealed.

NOTE

Section 33 serves a similar purpose to section 32. Judicial rectification of a document under section 8 of the Law Reform (Miscellaneous Provisions) Scotland Act 1985 operates retroactively, thus making the relevant entry in the Land Register inaccurate. By virtue of the amendments made to that Act by section 33, in future where a court grants decree rectifying a deed registered in the Land Register, the decree will not create an inaccuracy in the register, but instead will take effect upon the registration of the decree. The real rights of the parties concerned thus will change as of the date of the registration of the decree. The register will not be deemed (as it is under current law) to have been altered in the past. The draft Bill does not, however, change the rule in the 1985 Act about the rectification of the document being deemed to be retrospective in its operation. The reform effected by the draft Bill is thus only about when the real rights deriving from the deed in question are changed, and even then the reform is limited to the Land Register. See Part 29 of the Report.

34 Ranking of standard securities

In section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35) (ranking of standard securities), after subsection (3) there is added—

- “(4) An agreement as to the ranking *inter se* of two or more standard securities which are granted over the same land or the same real right in land may be registered in the Land Register of Scotland.”.

NOTE

Section 34 amends section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970 to make it clear that free-standing ranking agreements regulating the respective ranking of two or more standard securities can be registered. See paragraph 12.16 of the Report and recommendation 47(b).

PART 4

ADVANCE NOTICE

35 Advance notice

- (1) On the application of a person (“X”) and provided that the condition set out in subsection (9) is satisfied, the Keeper is to enter in the application record a notice (to be known as an “advance notice”)—
 - (a) relating to a registrable deed which X intends to grant to another person (“Y”),
 - (b) giving the name and designation both of X and of Y,
 - (c) giving the title number of the title sheet to which the intended deed is to relate, and
 - (d) describing the nature of the intended deed (as for example whether it is to be a disposition).
- (2) X may be—
 - (a) any person who validly may grant the intended deed, or
 - (b) with the consent of a person mentioned in paragraph (a), any other person.
- (3) If the advance notice relates to part only of a plot of land, or of the subjects of a lease—
 - (a) it must so describe the part as to enable the Keeper to delineate in the cadastral map the boundaries of the part, and
 - (b) the Keeper is, before making the entry under subsection (1), so to delineate those boundaries.
- (4) Subsection (3) is to be disregarded if the part to which the advance notice relates is a flat in a tenement (disregarded, that is, except in so far as the part includes a pertinent outwith the tenement building, being a pertinent only of the part) and either—
 - (a) the tenement is, by virtue of section 15(1), depicted as a steading in the cadastral map, or
 - (b) the Keeper has indicated that the tenement is, by virtue of that section, to be so depicted.
- (5) The advance notice is extant for the period of 35 days commencing with the day the notice is entered in the application record.

- (6) The period during which the advance notice is extant is referred to in this Act as the “protected period”.
- (7) After the protected period has elapsed, the Keeper is—
 - (a) to remove the notice from the application record, and
 - (b) if the notice has not already been entered in the archive record, to enter it in that record.
- (8) After such period as may be prescribed in rules under section 95(1)(p) the Keeper is, if the intended deed has not been registered, to remove from the cadastral map any delineation effected under subsection (3).
- (9) The condition is that either—
 - (a) such fee as is payable in respect of the application is paid, or
 - (b) arrangements satisfactory to the Keeper are made for payment of that fee.
- (10) After consultation with the Keeper, the Scottish Ministers may, by order made by statutory instrument, amend subsection (5) so as to provide for a different period during which an advance notice is extant from that for the time being mentioned in the subsection.

NOTE

Part 4 introduces a new system: the system of advance notices. The aim of an advance notice is to allow a party such as a buyer to secure a "protected period" of 35 days. So long as the deed is registered within the protected period, any deed in favour of a third party registered earlier within that period, either in the Land Register or in the Register of Inhibitions, is subject to the protected deed. The policy is discussed in Part 14 of the Report. Schedule 3 gives worked examples of the effect of advance notices, and Part 4 cannot be understood without reference to that schedule. Advance notices are merely temporary entries on the Application Record; they never enter the Title Sheet Record and accordingly, in the language of the draft Bill, whilst "entered", they are not "registered."

Section 35 provides that an advance notice may be entered on the application of a party who is entitled to grant the proposed deed (such as a seller). It is also possible for someone who does not meet that criterion to apply for the entry of an advance notice so long as the application is consented to by a person who does satisfy that criterion. See paragraphs 14.22 and 14.23 of the Report. The content of an advance notice is simple. It identifies (i) the proposed deed (eg disposition, lease, assignation of lease, standard security, assignation of standard security, servitude etc), (ii) the granter of that deed, (iii) the grantee of that deed and (iv) the property. (Subsection (1).) If the deed concerns the whole of a registered property, all that is needed for (iv) is the title number. In the case of an advance notice relating to part of a property, subsection (3)(b) requires the Keeper to map the part in question on the Cadastral Map before the notice is entered into the Application Record. Accordingly the extent of the part in question will be made public before the notice takes effect. Subsection (4) relaxes this mapping requirement for the case of tenement flats mapped, or to be mapped, on the steading method permitted by section 15.

Subsection (5) provides that an advance notice is extant for a period of 35 days. The period begins with the entry of the notice into the Application Record, ie the effect of advance notices is not back-dated to the date of receipt by the Keeper. See paragraph 14.68 of the Report. This period, which is called the "protected period", may – should experience show it to be desirable – be modified by subordinate legislation under subsection (10). On the expiry of the protected period, subsection (7) requires the Keeper to remove the entry from the Application Record and to ensure that it is entered into the Archive Record. (As to the detail of when it is entered into the Archive Record, see paragraph 14.69 of the Report.) Where the advance notice is over part only of a plot, subsection (8) requires the mapping of it to be removed from the Cadastral Map after such period as may be prescribed. (See paragraph 14.72 of the Report for the reasons for not simply requiring removal from the map immediately upon the expiry of the 35 days.)

Subsection (9) makes it a condition for the entry of an advance notice that the Keeper's fee is paid or that satisfactory arrangements for payment are in place. Such fees would be set by statutory instrument under section 90(1)(a).

36 Effect of advance notice

- (1) As respects any two deeds ("deed Y" and "deed Z"), if the condition mentioned in subsection (4) is satisfied then subsections (2) and (3) apply where —
 - (a) while a protected period relating to deed Y is running, application is made for registration of deed Z, and
 - (b) on or after the date of the application and while the protected period continues to run, application is made for registration of deed Y.
- (2) If deed Z is registered before the Keeper comes to make any decision as to whether or not to accept the application for registration of deed Y, that decision is to be taken as if deed Z had not been registered.
- (3) Where the Keeper's decision is to accept the application—
 - (a) deed Y has on registration the same effect as if deed Z had not been registered, but
 - (b) subject to paragraph (a), the effect of deed Z is unimpaired.
- (4) The condition is that deed Z either—
 - (a) is not a deed in relation to which a protected period is running, or
 - (b) is such a deed, but the advance notice relating to deed Y is entered in the application record before the advance notice relating to deed Z.
- (5) A deed to which an advance notice relates, if registered on a date which falls within the protected period, is not subject to—
 - (a) an inhibition registered in the Register of Inhibitions against the grantor and taking effect before that date but during that period, or
 - (b) anything registered or recorded in that register and taking effect, before that date but during that period, as if an inhibition registered against the grantor.
- (6) This section applies irrespective of whether a deed is voluntary or involuntary.

NOTE

Section 36 deals with the effect of an advance notice. See paragraphs 14.30 to 14.33 of the Report for discussion. Subsection (3) gives the principal effect, which is that the protected deed ("deed Y"), if registered within the protected period, takes effect as if a prior competing deed received with the protected period ("deed Z") had not been registered. Examples 1 to 8 in schedule 3 illustrate how this works. Subsection (5) gives the second effect; the grantee of deed Y is also protected from adverse entries in the Register of Inhibitions taking effect during the protected period; see example 10 in schedule 3. The registration date of the protected deed is not deemed to be backdated to the date of the entry of the advance notice. On the contrary, it takes effect from the ordinary date of registration.

Subsection (6) provides, for avoidance of doubt, that the section applies to involuntary deeds as well as those having the consent of the party effected. An example would be where a trustee in sequestration completes title.

37 Competition between advance notice and application for registration

- (1) This section applies where, on the same date, an advance notice and an application for registration in relation to—
 - (a) the same plot of land,
 - (b) the same subjects of a lease, or
 - (c) the same part of a plot of land or of subjects of a lease,are entered in the application record.
- (2) Irrespective of the order in which the entries are made, the application for registration is, for the purposes of section 36, deemed to have been entered in the application record before the commencement of the protected period.

NOTE

Section 37 provides for priority to be given to an application for registration where the application and an advance notice relating to the same plot are entered in the Application Record on the same date.

38 Examples to illustrate the working of sections 35 and 36

- (1) The examples contained in schedule 3 are provided to illustrate the working of sections 35 and 36.
- (2) In the case of any conflict between schedule 3 and another provision of this Act, the other provision prevails.
- (3) The Scottish Ministers may by order made by statutory instrument amend schedule 3 by adding a further example or in any other way.

NOTE

Section 38 introduces schedule 3. It provides that, in case of conflict, the terms of that schedule do not override the other provisions of the Bill. It delegates power to the Scottish Ministers to amend the schedule by statutory instrument.

PART 5

GUARANTEED TITLE: KEEPER'S WARRANTY

39 Keeper's warranty: general

- (1) The Keeper, in accepting an application—
 - (a) is to be taken to warrant to the applicant that, as at the time of registration and after compliance by the Keeper with section 22(1)(a) or 65(1)(a), the title sheet to which the application relates—
 - (i) is accurate in so far as it shows an acquisition, variation or discharge in favour of the applicant (or, in the case of an application under section 60, is accurate in so far as it shows the applicant to be the proprietor or proprietor in common), and
 - (ii) is not inaccurate in so far as there is omitted from it any encumbrance, but
 - (b) is not to be taken to warrant to the applicant that, as at that time and after such compliance—

- (i) the land to which the application relates is unencumbered by any public right of way,
 - (ii) that land is unencumbered by a path delineated in an order under section 22 of the Land Reform (Scotland) Act 2003 (asp2) (compulsory powers to delineate paths in land in respect of which access rights are exercisable),
 - (iii) that land is unencumbered by a servitude created other than by registration in accordance with section 75(1) of the Title Conditions (Scotland) Act 2003 (asp 9) (creation of positive servitude by writing: deed to be registered),
 - (iv) that a right appearing on the title sheet as a pertinent is of a kind capable of being a valid pertinent,
 - (v) a pertinent appearing on the title sheet and of a kind extinguishable or variable without registration against the title of the benefited property has not been extinguished, or varied, without registration,
 - (vi) the applicant has by registration acquired a right to mines or minerals,
 - (vii) a registered lease has not been varied or terminated without the variation or termination having been registered,
 - (viii) the title sheet to which the application relates is accurate in so far as it shows an acquisition, variation or discharge more extensive than the deed registered bore to effect, or
 - (ix) alluvion has not had an effect on a boundary.
- (2) However—
- (a) the reference in subsection (1) to accepting an application does not include a reference to accepting it by virtue of section 21, and
 - (b) the Keeper may—
 - (i) grant more extensive warranty than is provided for in that subsection if satisfied (having regard to sufficiency of evidence as to title) that it is apt to do so, or
 - (ii) exclude warranty or grant less extensive warranty than is so provided for if in doubt as to the validity of the acquisition, variation or discharge in question.
- (3) Where warranty is—
- (a) granted under sub-paragraph (i) or (ii) of subsection (2)(b), or
 - (b) excluded under sub-paragraph (ii) of that subsection,
- the Keeper is to give effect to the grant or exclusion by entering a statement describing it on the title sheet.
- (4) If an entry made in the title sheet on an application being accepted by virtue of section 21 ceases to be provisional, the Keeper may—
- (a) grant such warranty as appears to the Keeper to be apt (having regard to sufficiency of evidence as to title), and
 - (b) give effect to the grant by entering a statement describing it in the title sheet.
- (5) Subsection (6) applies where warranty is—

- (a) either—
 - (i) as provided for in subsection (1), or
 - (ii) granted under subsection (2) or (4) or under this subsection,

but the Keeper comes to be satisfied that it is apt (having regard to sufficiency of evidence as to title) to grant more extensive warranty, or
 - (b) excluded under subsection (2)(b)(ii) but the Keeper comes to be satisfied (having such regard) that it is apt to grant warranty.
- (6) The Keeper may—
- (a) grant warranty accordingly and (unless the grant is by virtue of subsection (5)(b) and the warranty granted is warranty only as provided for in subsection (1)) give effect to the grant by entering a statement describing it on the title sheet, and
 - (b) remove any statement previously entered under subsection (3) or (4) or under this subsection.
- (7) In relation to registration as respects a title condition, references in subsection (1) to the applicant are to be construed as references to the person benefiting from the deed given effect to.
- (8) In relation to registration of an ascertainment deed, references in subsection (1) to the applicant and to an acquisition in favour of the applicant are to be construed as references to the proprietor for the time being of any sharing plot and to an acquisition in favour of that person.
- (9) The benefit of warranty extends to persons to whom the benefit of warrandice by the granter of a deed would extend.
- (10) This section is subject to sections 40 and 41.
- (11) In subsection (7), “title condition” is to be construed in accordance with section 122(1) of the Title Conditions (Scotland) Act 2003 (asp9).

NOTE

Under the 1979 Act, if a registered title is rectified, the person who suffers thereby is normally entitled to compensation from the Keeper under s 12(1)(a) of the 1979 Act. There are various qualifications, one of which is where the Keeper had excluded indemnity. The draft Bill adopts an approach that in functional terms is broadly similar. But the conceptual approach is different. Under the draft Bill the Keeper normally warrants the applicant's title. If the title turns out to be less good than which was warranted then the Keeper is liable to pay compensation for the resulting loss. As with the current law it is open to the Keeper to exclude warranty at the time of registration. Unlike the current law, the draft Bill provides criteria for the grant of warranty. The parts of the Report most relevant to Part 5 of the draft Bill are Parts 17, 19, 20, 21, 22 and 25.

Subsection (1)(a) of section 39 sets out the core provision of Part 5: registered titles are guaranteed titles.

Subsection (1)(b) sets out the limitations on the warranty. These limitations are discussed in Part 22 of the Report.

Subparagraphs (i), (ii) and (iii) list three types of encumbrances that the Keeper does not guarantee the property to be free from. But this list is not exhaustive. For the core of the Keeper's warranty is that the title sheet in question is not inaccurate. That means that if the title sheet omits encumbrances that it is not required to include, it is not inaccurate. (See the definition of inaccuracy in section 53.) For example, if a property is subject to a short lease that is not mentioned in the title sheet, there is no breach of the warranty.

Subparagraphs (iv) and (v) deal with pertinents and are self-explanatory. (Apart from these exceptions, the Keeper's warranty extends to pertinents.) See paragraphs 22.27 and 22.28 of the Report.

Subparagraph (vi) is self-explanatory. See paragraph 22.31 of the Report.

Subparagraph (vii) is self-explanatory. See paragraph 9.31 of the Report.

Subparagraph (viii) deals with the case where, by administrative error on the Keeper's part, the terms of the registration are more favourable to the applicant than the deed in question justified. Examples would include additional land, or some additional pertinent. See paragraph 22.24 of the Report.

Subparagraph (ix) deals with the case where a title boundary is tied to a water boundary and the latter shifts, taking the former with it.

The Keeper's warranty is presumed to be granted: any exclusion must be express. Hence it is necessary for subsection (2)(a) to state that in section 21 cases (*a non domino* cases) warranty is not granted. Subsection 2(b) allows the Keeper to grant superwarranty or subwarranty or no warranty. See paragraphs 22.36 to 22.40 of the Report. The criteria are set out. Subsections (5) and (6) allow subsequent warranty upgrade. By contrast, subsequent warranty downgrade is not competent. See paragraph 22.43 of the Report.

The other subsections do not call for particular comment except, perhaps, for subsection (9). The warrandice that the granter of a deed normally gives to the grantee can be transmitted to the latter's successors. The same rule applies to the Keeper's warranty.

40 Keeper's warranty: circumstances in which liability is excluded

The Keeper has no liability, by virtue of section 39—

- (a) for an inaccuracy consequent upon an error in the cadastral map if that error was made in reasonable reliance upon the base map,
- (b) for an inaccuracy the existence of which was, or ought to have been, known to—
 - (i) the applicant, or
 - (ii) any person acting as solicitor or other legal adviser to the applicant, at the time of registration,
- (c) in so far as an inaccuracy is attributable to a failure of—
 - (i) the applicant, or
 - (ii) any person acting as solicitor or other legal adviser to the applicant, to comply with the duty owed to the Keeper under section 27,
- (d) in so far as the claimant's loss could have been avoided had certain measures been taken by the applicant or claimant, being measures which it would have been reasonable for the applicant or claimant to take,
- (e) in so far as the connection between the claimant's loss and an inaccuracy is too remote, or
- (f) for non-patrimonial loss.

NOTE

Section 40 sets out restrictions on the Keeper's section 39 liability. They are self-explanatory.

41 Warranty subject to any caveat

If at any time a caveat is placed on a title sheet, the Keeper's warranty in respect of an application—

- (a) which refers to that title sheet, and
- (b) is received at or after that time,

is subject to the caveat for so long as the caveat remains in place.

NOTE

Section 41 makes it clear that the Keeper's warranty is also excluded if there is a relevant caveat on the title sheet. For example, a person is the registered owner of land. Another person raises an action and, having obtained judicial warrant, places a caveat on the title sheet. The caveat does not prevent the registered owner from dealing with the property, but any grantee takes subject to the caveat, and as such has no claim against the Keeper if it turns out that the action giving rise to the caveat is a well-founded action with consequences for the title. For caveats see Part 32 of the Report.

42 Claim under Keeper's warranty: general

- (1) Any obligation to pay compensation in respect of a breach of the Keeper's warranty arises only if and when the inaccuracy giving rise to the obligation is rectified.
- (2) A claimant is not required to exhaust other remedies before making a claim to such compensation.
- (3) Payment by the Keeper in respect of such an obligation does not extinguish any rights which the claimant may have against another person in respect of the loss compensated; and it is a condition of any such payment that the claimant assign any such rights to the Keeper.

NOTE

Section 42 is self-explanatory. See in particular paragraphs 22.45 and 22.57 of the Report.

43 Breach of Keeper's warranty: quantification of compensation etc.

- (1) Compensation payable in respect of a breach of the Keeper's warranty—
 - (a) is, in so far as it is not compensation mentioned in paragraph (b), to be quantified as at the date on which the inaccuracy giving rise to the claim is rectified, and
 - (b) is to include—
 - (i) reimbursement of reasonable extra-judicial legal expenses, and
 - (ii) compensation for any other consequential loss.
- (2) Interest on a sum so payable—
 - (a) other than by virtue of paragraph (b) of subsection (1), runs from the date mentioned in paragraph (a) of that subsection,
 - (b) by virtue of paragraph (b)(i) of that subsection, runs from the date on which the claimant paid the sum in question, and
 - (c) by virtue of paragraph (b)(ii) of that subsection, runs from the date on which the loss was sustained,

until the sum in question is paid.

NOTE

Section 43 is about how the amount of compensation should be calculated. See paragraphs 22.48 to 22.56 of the Report.

PART 6

GUARANTEED TITLE: REALIGNMENT OF RIGHTS

44 Overview of Part 6

- (1) This Part is about grantees, in certain circumstances, taking free from latent inaccuracies in the register.
- (2) Provision is made for rights relating to property to be realigned so that they conform with what is set out in the register.

NOTE

Section 44 is an overview section. Part 6 is about the realignment of rights, which is to say cases where there has been an inaccuracy, but instead of the inaccuracy being rectified, the rights of the parties concerned are realigned to conform with what the register says they are. Realignment happens only in the cases defined in Part 6. In any other case, if there is an inaccuracy then the register must be rectified. Part 23 deals with the subject, but several other parts of the Report are also relevant, including Parts 13, 17, 19, 21 and 25.

45 Invalidity in disponent's title

- (1) This section applies where a person ("A") entered in the proprietorship section of a title sheet as proprietor and in possession of the registered plot of land purports to disponent the land but is not the proprietor; and they also apply where a person ("P") not so entered, but who would have power to disponent that land—
 - (a) were A the proprietor, or
 - (b) (where A has died) had A been the proprietor,purports to disponent it.
- (2) For the purposes of this section, possession of the plot by P is to be treated as if it were possession of the plot by A.
- (3) The disponent ("B") acquires ownership of the land provided that—
 - (a) B is in good faith as at the date on which (disregarding this paragraph) B would acquire ownership,
 - (b) the disposition would have conferred ownership on B had A been proprietor when the land was disponent,
 - (c) as at the date on which (disregarding this paragraph) B would acquire ownership the title sheet neither—
 - (i) is subject to a caveat relevant to such acquisition by B, nor
 - (ii) contains a statement under section 65(4), and
 - (d) the Keeper warrants (or is to be taken to warrant) A's title.

- (4) The date on which ownership is so acquired—
 - (a) is that on which the disposition is registered (with B entered in the proprietorship section of the title sheet as proprietor) provided that, as at the date of registration, the land has been in the possession of A, openly, peaceably and without judicial interruption, for a continuous period of one year (or first of A and then of B for periods which together constitute a continuous period of one year), or
 - (b) in a case where there is such a continuous period of possession but that period, though it commences before registration on the application of B, does not expire until a date later than the date of registration, is that later date.

NOTE

Section 45 is probably the most important type of case covered in Part 6. It provides that if (i) the register shows someone as proprietor, but (ii) that person's title is in fact void, then when (iii) that person disposes to another, and (iv) that second person is duly registered, if (v) certain other requirements are met, and (vi) certain requirements as to possession are satisfied, then (vii) that second person acquires ownership.

46 Extinction of encumbrance when land disposed

- (1) Where a person (“A”) acquires ownership of land on its being disposed then, provided that the conditions mentioned in subsection (2) are satisfied—
 - (a) A takes the land free of an encumbrance which (other than by virtue of section 16) is not entered in the title sheet as at the date on which the disposition is registered, and
 - (b) any such encumbrance is extinguished.
- (2) The conditions are that, as at the date on which ownership is acquired—
 - (a) there is good faith on the part of A, and
 - (b) the title sheet is not subject to a caveat relevant to such acquisition by A.
- (3) “Encumbrance” in subsection (1) does not include—
 - (a) a public right of way,
 - (b) a path delineated in an order under section 22 of the Land Reform (Scotland) Act 2003 (asp2) (compulsory powers to delineate paths in land in respect of which access rights are exercisable),
 - (c) a servitude created other than under section 75(1) of the Title Conditions (Scotland) Act 2003 (asp 9),
 - (d) a lease, or
 - (e) an encumbrance the creation of which does not require registration of the constitutive deed.

NOTE

Section 46 provides that in certain cases if an encumbrance has been omitted from the register, a good faith disponee will take free from that encumbrance. For example, a property is subject to a standard security. The owner forges a discharge, and registers it. As a result the standard security is deleted from the title sheet. But because the discharge is a forgery the property is still encumbered by the security. The owner now disposes to another person. If that second person is in good faith, the security is extinguished on the day when the second person is registered as proprietor.

Subsection (3) lists types of encumbrances that are not subject to section 46. This naturally includes any encumbrance which is not supposed to be entered in the Land Register anyway, such as a short lease. But it covers certain other cases too. One example is a prescriptive servitude. Although section 10 requires the Keeper to enter into the burdens section of a title sheet any servitude that encumbers the property, which includes servitudes constituted by prescriptive use, if the Keeper does not do so the servitude would not be extinguishable under section 46. More generally, section 46(3)(e) covers cases that under the current law would be "overriding interests".

47 Floating charge granted by predecessor in title of disponent

- (1) Where a person ("A") acquires ownership of land on its being disposed by another person ("B") then, provided that the condition mentioned in subsection (2) is satisfied, A takes the land free of any floating charge which was granted by a predecessor in title of B.
- (2) The condition is that there is good faith on the part of A.

NOTE

Section 47 protects a *bona fide* disponent from the risk of an attached floating charge involving a predecessor in title. See paragraph 30.12 of the Report.

48 Assignment of lease: invalidity in cedent's title

- (1) This section applies where a person ("A") shown in a title sheet as tenant under a registered lease and in possession of the subjects of the lease purports to assign the lease but is not the tenant; and they also apply where a person ("P") not so entered, but who would have power to assign that lease—
 - (a) were A the tenant,
 - (b) (where A has died) had A been the tenant,purports to assign it.
- (2) For the purposes of this section, possession of the subjects by P is to be treated as if it were possession of the subjects by A.
- (3) The assignee ("B") acquires the lease provided that—
 - (a) B is in good faith as at the date on which (disregarding this paragraph) B would acquire the lease,
 - (b) the lease is extant,
 - (c) B would have acquired the lease had A been tenant when the lease was assigned,
 - (d) the title sheet is not, as at the date on which (disregarding this paragraph) B would acquire the lease, subject to a caveat relevant to such acquisition by B, and
 - (e) the Keeper warrants (or is to be taken to warrant) A's title.
- (4) The date on which the lease is so acquired—
 - (a) is that on which the deed of assignment is registered (with B shown in the title sheet as tenant) if as at the date of registration, the subjects of the lease have been in the possession of A, openly, peaceably and without judicial interruption, for a continuous period of one year (or first of A and then of B for periods which together constitute a continuous period of one year), or

- (b) in a case where there is such a continuous period of possession but that period, though it commences before registration on the application of B, does not expire until a date later than the date of registration, is that later date.

NOTE

Section 48 mirrors section 45, except that it applies not to dispositions but to assignments of registered leases. It does not apply to deeds creating new leases, granted by someone with a bad title. Nor does it apply to assignments of leases that do not validly exist, or that have ceased to exist. It applies only to cases where there exists a valid lease but the person who assigns it does not have a title to it.

49 Extinction of encumbrance when lease assigned

- (1) Where a person (“A”) acquires a registered lease on its being assigned then, provided that the conditions mentioned in subsection (2) are satisfied—
 - (a) A takes that lease free of an encumbrance—
 - (i) which is created as a standard security over the lease or as a title condition such as is mentioned in paragraph (d) or (e) of the definition of “title condition” in section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9), and
 - (ii) which (other than by virtue of schedule 1) is not entered in the title sheet as at the date on which the deed of assignation is registered, and
 - (b) any such encumbrance is extinguished.
- (2) The conditions are that, as at the date on which the lease is acquired—
 - (a) there is good faith on the part of A, and
 - (b) the title sheet is not subject to a caveat relevant to such acquisition by A.

NOTE

Section 49 mirrors section 46, in relation to assignments of registered leases.

50 Grant of servitude by person not proprietor

- (1) This section applies where a person (“A”) entered in the proprietorship section of a title sheet as proprietor and in possession of the plot of land purports to create a servitude, with the land as the burdened property, but is not the proprietor.
- (2) The servitude is created provided that the conditions mentioned in subsection (4) are satisfied.
- (3) The date on which the servitude is created—
 - (a) is that of registration if, as at the date of registration, the land has been in the possession of A, openly, peaceably and without judicial interruption, for a continuous period of one year, or
 - (b) in a case where there is such a continuous period of possession but that period, though it commences before registration, does not expire until a date later than the date of registration, is that later date.
- (4) The conditions are that—

- (a) as at the date on which (disregarding this subsection) the servitude would be created—
 - (i) the proprietor of what is to be the benefited property is in good faith, and
 - (ii) the title sheet is not subject to a caveat relevant to the creation of the servitude, and
 - (b) the Keeper warrants (or is to be taken to warrant) A's title.
- (5) This section is subject to section 75 of the Title Conditions (Scotland) Act 2003 (asp 9) (creation of positive servitude by writing: deed to be registered).

NOTE

Section 50 provides that in certain cases a servitude granted by someone with a bad title is valid. It presupposes good faith on the part of the grantee. There is also a possession requirement, which is, however, not the same as the possession requirement in section 45 cases. Section 50 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, ie as a pertinent, but in fact the servitude is invalid. In such a case the servitude remains invalid notwithstanding the transfer to a *bona fide* disponee.

51 Compensation for those who suffer loss by virtue of Part 6

- (1) Where by virtue of this Part—
 - (a) a person is deprived of a right, or
 - (b) a servitude is created, with the person's property as the burdened property, without the person agreeing,
 the person is entitled to claim compensation in that regard from the Keeper.
- (2) A claimant is not required to exhaust other remedies before making a claim to such compensation.
- (3) Payment by the Keeper in respect of such a claim does not extinguish any rights which the claimant may have against another person in respect of the loss compensated; and it is a condition of any such payment that the claimant assign any such rights to the Keeper.
- (4) But the Keeper has no liability, by virtue of subsection (1)—
 - (a) in so far as the claimant's loss could have been avoided had certain measures been taken by the claimant, being measures which it would have been reasonable for the claimant to take,
 - (b) in so far as the claimant's loss is too remote, or
 - (c) for non-patrimonial loss.

NOTE

Realignment confers a right and inevitably thus deprives someone else of a right. For example, if a standard security is extinguished under section 46, the creditor has lost a right. If ownership is acquired under section 45, someone else has lost ownership of that property. Such losses of rights are non-consensual and must be compensated. Section 51(1) requires the Keeper to compensate the victim. It may be that the victim has remedies against some other party. Subsection (3) says that any such rights are unaffected by the payment of compensation by the Keeper, and also says that in exchange for compensation the victim is to assign to the Keeper any claims against other parties. Subsection (2) makes it

clear that the victim can make the Keeper the first port of call. Subsection (4) spells out some commonsensical limits on liability. See paragraphs 23.37 to 23.41 of the Report.

52 Claim by virtue of section 51(1): quantification of compensation etc.

- (1) Compensation payable by the Keeper in respect of a claim made by virtue of section 51(1)—
 - (a) is, in so far as it is not compensation mentioned in paragraph (b), to be quantified as at the date on which the claimant lost the right or as the case may be on which the servitude was created, and
 - (b) is to include—
 - (i) reimbursement of reasonable extra-judicial legal expenses, and
 - (ii) compensation for any other consequential loss.
- (2) Interest on a sum so payable—
 - (a) other than by virtue of paragraph (b) of subsection (1), runs from the date mentioned in paragraph (a) of that subsection,
 - (b) by virtue of paragraph (b)(i) of that subsection, runs from the date on which the claimant paid the sum in question, and
 - (c) by virtue of paragraph (b)(ii) of that subsection, runs from the date on which the loss was sustained,until the sum in question is paid.

NOTE

Section 52 explains how the amount of a section 51 claim is to be calculated. See paragraphs 23.38 and 23.39 of the Report.

PART 7

INACCURACIES AND RECTIFICATION

53 Inaccuracies

- (1) A title sheet is inaccurate in so far as it—
 - (a) misstates what the position is in law or in fact,
 - (b) omits anything required, by or by virtue of an enactment, to be included in it,
 - (c) includes anything the inclusion of which is not expressly or impliedly permitted by, or by virtue of, an enactment, or
 - (d) contains, by virtue of section 21(4) or 54(5)(b)(i), an entry marked “provisional”.
- (2) The cadastral map is inaccurate in so far as it—
 - (a) wrongly depicts or shows what the position is in law or in fact,
 - (b) omits anything required, by or by virtue of an enactment, to be depicted or shown on it,
 - (c) depicts or shows anything the depiction or showing of which is not permitted by or by virtue of an enactment.

- (3) Neither a title sheet nor the cadastral map is inaccurate by reason only that a deed which gave rise to the acquisition, variation or discharge of a real right—
 - (a) was voidable and has been reduced, or
 - (b) has been rectified under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) (rectification of defectively expressed documents).
- (4) And the cadastral map is not inaccurate in so far as it does not depict something correctly by reason only of an inexactness in the base map.
- (5) Subsection (4) is subject to section 14(1).

NOTE

One of the criticisms of the 1979 Act is that it did not explain the concept of inaccuracy. The draft Bill devotes this section to doing so. Under the 1979 Act there were in fact two kinds of inaccuracy, called in the Report "actual inaccuracy" and "bijural inaccuracy". In the draft Bill the latter is not possible, so that any inaccuracy that may occur is an actual inaccuracy. See Part 17 of the Report.

Section 53 uses the concept of that which ought to have entered the relevant title sheet in terms of an enactment. "Enactment" includes Part 2 of the draft Bill. For example, Part 2 requires the entry, as an encumbrance, of any public right of way and any servitude constituted by prescriptive use. Thus the relevant title sheet would be inaccurate in omitting such encumbrances. By contrast, it would not be inaccurate in omitting a short lease. Indeed, if it did include a short lease, that itself would be an inaccuracy because the title sheet is not to include short leases, for there is no statutory basis for such inclusion, and title sheets must show only such rights whose inclusion is authorised by some enactment. Likewise a title sheet would be inaccurate if it included merely contractual rights.

Subsection (3)(a) signals a change in the law about the reduction of voidable deeds. The effect of the draft Bill is that where an entry in the Land Register rests on 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 the decree does not make the register inaccurate. This applies only to voidable deeds. Where an entry in the Land Register rests on a void deed, the register is to that extent inaccurate from the outset, and should be rectified. See generally Part 28 of the Report.

Subsection (3)(b) is also a change in the law. Under the current law, where an entry in the Land Register rests on a deed that has been rectified under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, the rectification (of the deed under the 1985 Act) makes the register to that extent inaccurate and accordingly the rectification (of the deed under the 1985 Act) is to be given effect to in the register by rectification (of the register under section 9 of the 1979 Act). The effect of the draft Bill is that where an entry in the Land Register rests on a deed that has been rectified (under the 1985 Act), the register does not thereby become inaccurate, but instead the rectification (of the deed) is to be given effect to in the register by registration. See generally Part 29 of the Report.

54 Rectification of the register

- (1) The Keeper, on being aware of a manifest (and not merely a probable) inaccuracy in the title sheet record or in the cadastral map—
 - (a) must rectify the inaccuracy if what is needed to effect rectification is manifest, and
 - (b) if what is so needed is not manifest, must enter in the title sheet in question, or as the case may be in the cadastral map, a note identifying the inaccuracy;
 but this subsection is subject to subsection (5).
- (2) When, under subsection (1), an inaccuracy is rectified the Keeper—

- (a) is to include in the archive record a copy of any document which discloses, or contributes to disclosing, the inaccuracy, and
 - (b) is, by such means as the Keeper considers appropriate, to give notice of the rectification to any person who appears to the Keeper to be affected by it materially.
- (3) Subsection (2)(b) is subject to the provisions of any rules made under section 95(1)(g).
- (4) A failure to comply with subsection (2) or with any rules so made does not affect the validity of a rectification under subsection (1).
- (5) Where it appears to the Keeper that rectification of an inaccuracy would interrupt a period of possession which is current and which if uninterrupted would, under section 1A(2), 1B(2) or 2(1) of the Prescription and Limitation (Scotland) Act 1973 (c.52) (sections which provide for positive prescription) affect a real right, the Keeper—
- (a) if the inaccuracy is an entry marked “provisional” by virtue of section 21(4), is not to effect the rectification before it is judicially determined that the inaccuracy exists, and
 - (b) in the case of any other entry—
 - (i) is to mark the entry “provisional” (which the entry then becomes),
 - (ii) is to enter in the appropriate section of the title sheet the name and designation of the true holder of the right affected by the inaccuracy (if any such person can be identified), and
 - (iii) thereafter is not to effect the rectification before it is judicially determined that the inaccuracy exists.
- (6) Paragraphs (a) and (b)(iii) of subsection (5) are to be disregarded if rectification is with the consent of those affected.

NOTE

Section 54 is about rectification, a subject covered by Part 18 of the Report. Subsection (1) is the main provision of the section. In the first place it requires the Keeper to rectify the register whenever an inaccuracy comes to light. That approach is different from the approach of the 1979 Act in several respects. One is that the 1979 Act requires that in certain cases the register must remain inaccurate, ie rectification is prohibited. Another is that the 1979 Act provides that even where rectification is allowed, rectification is a matter for the Keeper's discretion, unless the court or Lands Tribunal orders that rectification should happen. A third point of difference is that the draft Bill does not provide for applications for rectification. Under the draft Bill, if there is an inaccuracy the Keeper's obligation to rectify exists by force of that fact alone, and so does not need to be engaged by an application.

Subsection (1) also provides that rectification is not to happen unless the inaccuracy is "manifest", ie unless the evidence for it is indisputable. If it is merely more likely than not that an entry is inaccurate, the Keeper is not to rectify.

Subsection (5) is a limited qualification to the Keeper's duty to rectify. Where rectification would prevent the running of positive prescription, the Keeper should not rectify unless and until the fact of the inaccuracy has been determined by decree.

55 Rectification of inaccuracy: compensation for certain expenses and losses

- (1) A person is entitled to receive from the Keeper compensation for—
 - (a) reimbursement of reasonable extra-judicial expenses incurred by the person in securing rectification of the register, and
 - (b) compensation for any loss sustained in consequence of the inaccuracy rectified.
- (2) A claimant is not required to exhaust other remedies before making a claim to such compensation.
- (3) Payment by the Keeper in respect of such a claim does not extinguish any rights which the claimant may have against another person in respect of the loss compensated; and the Keeper may make it a condition of any such payment that the claimant assign any such rights to the Keeper.
- (4) Interest on a sum payable—
 - (a) by virtue of paragraph (a) of subsection (1), runs from the date on which the claimant paid the sum in question, and
 - (b) by virtue of paragraph (b) of that subsection, runs from the date on which the loss was sustained,until the sum in question is paid.
- (5) This section is subject to section 56.

NOTE

This section provides for compensation to be payable to a person in whose favour the Land Register is rectified. In many cases such a person suffers no loss. But in some circumstances the fact of the inaccuracy (prior to its rectification) may have caused the person in question expense or loss. See paragraphs 27.13 to 27.15 of the Report.

56 Rectification of inaccuracy: circumstances in which liability by virtue of section 55 is excluded

The Keeper has no liability, by virtue of section 55—

- (a) if the inaccuracy is caused other than by a change made by the Keeper to the title sheet record,
- (b) in so far as the inaccuracy is an entry made on an application being accepted by virtue of section 21(1) or under section 21(3),
- (c) in so far as the inaccuracy is caused by some act or omission on the part of the claimant,
- (d) in so far as the claimant's loss could have been avoided had certain measures been taken by the claimant, being measures which it would have been reasonable for the claimant to take,
- (e) in so far as the connection between the claimant's loss and the inaccuracy is too remote, or
- (f) for non-patrimonial loss.

NOTE

This section sets out limitations on the Keeper's liability under section 55.

57 Keeper's right to be involved in proceedings in which the accuracy of the register is put in question

In any proceedings, whether before a court or before a tribunal, in which the accuracy of the register is put in question, the Keeper is entitled to appear and to be heard.

NOTE

Section 57 is self-explanatory. See paragraphs 31.17 and 31.18 of the Report.

PART 8

COMPLETION OF THE REGISTER

58 Overview of Part 8

- (1) This Part is about completion of the register, that is to say about its extension, through what is commonly referred to as first registration, to all land to which it does not yet apply.
- (2) The Part is also about the closure of the Register of Sasines to the recording of deeds.

NOTE

Section 58 is an overview section. Part 8 is about bringing into the Land Register such properties as are still unregistered, with the aim of 100% coverage. See generally Part 33 of the Report.

59 Application by person with right to complete title

- (1) This section applies where the grantee of a disposition of, or a person in whose favour there is a notice of title to, an unregistered plot of land applies for registration of the plot.
- (2) A competent application is to be accepted by the Keeper to the extent the applicant satisfies the Keeper that, as at the date of the application, the conditions mentioned in subsection (4) are met.
- (3) To the extent the applicant does not so satisfy the Keeper, the application falls to be rejected; but subsection (2) and this subsection are subject to subsection (7) and to section 21(10).
- (4) The conditions are that—
 - (a) the deed sought to be registered either—
 - (i) is valid, or
 - (ii) is a deed to which section 21(1) applies,
 - (b) the application is such that the Keeper is able to comply, in respect of it, with such duties as the Keeper has under Part 2,

- (c) the deed sought to be registered so describes the plot as to enable the Keeper to delineate its boundaries in the cadastral map,
 - (d) where within the plot there is a lesser area in respect of which a registrable encumbrance is constituted (being neither a right to lead a pipe, cable, wire or other such enclosed unit over or under land nor a servitude created other than by registration), there is included in, or submitted with, the application a plan or description sufficient to enable the Keeper to delineate the boundaries of the lesser area in the cadastral map,
 - (e) the plot is not a souvenir plot,
 - (f) the application does not fall to be rejected by virtue of section 10A of the Requirements of Writing (Scotland) Act 1995 (c.7) (registration of document) or of a prohibition in an enactment,
 - (g) where a form of application is prescribed, in or by virtue of rules under section 95(1)(d), for an application of the kind in question, the form in which the application is made is the prescribed form, and
 - (h) either—
 - (i) such fee as is payable for registration is paid, or
 - (ii) arrangements satisfactory to the Keeper are made for payment of that fee.
- (5) Paragraphs (c) and (d) of subsection (4) are to be disregarded if the plot to which the application relates is a flat in a tenement (disregarded, that is, except in so far as the plot includes a pertinent outwith the tenement building, being a pertinent only of the plot) and either—
- (a) the tenement is, by virtue of section 15(1), depicted as a steading in the cadastral map, or
 - (b) the Keeper has indicated that the tenement is, by virtue of that section, to be so depicted.
- (6) And in the case of any application which relates to registration to create as a servitude a right to lead a pipe, cable, wire or other such enclosed unit over or under land, the condition set out in paragraph (c) of subsection (4) is to be disregarded.
- (7) While an application is pending, the applicant—
- (a) may withdraw it, but
 - (b) except with the consent of the Keeper, may not amend, amplify or supplement it.
- (8) Without prejudice to the generality of paragraph (b) of subsection (7), rules made under section 95(1)(b) may specify circumstances in which consent under that paragraph is to be given.
- (9) In subsection (4)(e), “souvenir plot” means a plot of land which—
- (a) is of inconsiderable size and of no practical utility, and
 - (b) is not a plot the ownership of which has, at any time, separately been constituted or transferred by a document recorded in the Register of Sasines.
- (10) On accepting an application under this section, the Keeper is to register the disposition or as the case may be the notice of title.

- (11) In the application of subsections (1) to (10) to a case in which transfer of ownership is by virtue of compulsory acquisition, any reference in those subsections to a “disposition” includes a reference to—
- (a) a conveyance the form of which is provided for by an enactment,
 - (b) a notarial instrument, or
 - (c) a general vesting declaration.

NOTE

This covers the typical case of "first registration", where an as-yet unregistered property is disposed. The disposition will not be recordable in the Register of Sasines (see section 64). Under section 59 there is both (i) first registration of the property and (ii) registration of the disposition. Whereas under the 1979 Act, first registration is not triggered by gratuitous dispositions, under the draft Bill all dispositions of unregistered property trigger first registration. The section also covers the case where an unregistered holder (uninfert proprietor to use older terminology) of as-yet unregistered property wishes to complete title. (For notices of title, see section 69.) Much of the detail of the section mirrors the rules of section 20 (which apply to deeds relating to registered property).

60 Voluntary registration

- (1) Where the proprietor (or, in the case of ownership in common, any of the proprietors) of an unregistered plot of land applies for registration of the plot, then to the extent—
- (a) the applicant satisfies the Keeper that, as at the date of the application the conditions mentioned in subsection (3) are met, and
 - (b) the Keeper is satisfied that it is expedient that the plot should be registered,
- the application is to be accepted by the Keeper and otherwise it falls to be rejected; but this subsection is subject to subsection (5).
- (2) Paragraph (b) of subsection (1)—
- (a) does not apply if the applicant is under an obligation to grant a registrable lease of the plot or of any part of the plot, and
 - (b) ceases to have effect as from such day as the Scottish Ministers, after consultation with the Keeper, are by order made by statutory instrument to specify.
- (3) The conditions are that—
- (a) there is submitted with the application a plan or description of the plot sufficient to enable the Keeper to delineate the plot’s boundaries in the cadastral map,
 - (b) the application is such that the Keeper is able to comply, in respect of it, with such duties as the Keeper has under Part 2,
 - (c) where within the plot there is a lesser area in respect of which a registrable encumbrance is constituted (being neither a right to lead a pipe, cable, wire or other such enclosed unit over or under land nor a servitude created other than by registration), there is included in, or submitted with, the application a plan or description sufficient to enable the Keeper to delineate the boundaries of the lesser area in the cadastral map,
 - (d) the plot is not a souvenir plot,

- (e) where a form of application is prescribed, in or by virtue of rules under section 95(1)(d), for an application of the kind in question, the form in which the application is made is the prescribed form, and
- (f) either—
 - (i) such fee as is payable for registration is paid, or
 - (ii) arrangements satisfactory to the Keeper are made for payment of that fee.
- (4) Paragraphs (a) and (c) of subsection (3) are to be disregarded if the plot to which the application relates is a flat in a tenement (disregarded, that is, except in so far as the plot includes a pertinent outwith the tenement building, being a pertinent only of the plot) and either—
 - (a) the tenement is, by virtue of section 15(1), depicted as a steading in the cadastral map, or
 - (b) the Keeper has indicated that the tenement is, by virtue of that section, to be so depicted.
- (5) While an application is pending, the applicant—
 - (a) may withdraw it, but
 - (b) except with the consent of the Keeper, may not amend, amplify or supplement it.
- (6) Without prejudice to the generality of paragraph (b) of subsection (5), rules made under section 95(1)(b) may specify circumstances in which consent under that paragraph is to be given.
- (7) In subsection (3)(d), “souvenir plot” has the same meaning as in section 59(4)(e).

NOTE

This section is about what is commonly called "voluntary registration", which is to say the case where the proprietor of as-yet unregistered property applies for the property to be registered in the Land Register. See further paragraphs 33.24 to 33.28 of the Report. Since the applicant is already proprietor, no change of rights is involved and there is no deed to be registered. Here, as elsewhere in the draft Bill, "proprietor" means a person who has a valid completed title as proprietor. (See section 92(1).)

The 1979 Act (section 2(1)(b)) gives the Keeper discretion as to whether to accept such an application. Section 60(1)(b) continues that discretion but only on a temporary basis: see section 60(2)(b). Section 60(2)(a) provides that the discretion does not apply even on a temporary basis if the proprietor is granting a long lease. The reason for this is that under the draft Bill a long lease cannot be registered unless the property is already registered.

Subsections (3), (4) and (5) set out the detailed rules about such applications: to a substantial extent these reflect the details of section 20, but one difference is that section 60 cases do not involve the registration of a deed.

61 Registration other than on application with or without consent and at any time

Other than on application and irrespective of whether the proprietor or any other person consents, the Keeper may register any unregistered plot of land at any time.

NOTE

Section 61 is among the more important provisions of the draft Bill. It provides that the Keeper may simply register any property that is still unregistered. To do so, the consent of the proprietor or any other

person is not required. Such registration does not alter the rights of any person. It is by means of section 61 that 100% coverage of Scotland will eventually be attained. See further paragraphs 33.47 to 33.58 of the Report.

62 Registration in other circumstances

- (1) Subsection (2) applies where a lease which has not been registered is assigned.
- (2) If—
 - (a) the Keeper registers the assignation, and
 - (b) as at the time of registration the subjects of the lease consist of a plot of land which has not been registered,the Keeper is first to register that plot of land.
- (3) Subsection (4) applies where a tenant grants a sublease.
- (4) If—
 - (a) the Keeper registers the sublease, and
 - (b) as at the time of registration the subjects of the tenant's lease consist of a plot of land which has not been registered,the Keeper is first to register that plot of land.
- (5) Subsection (6) applies where a deed is registrable by virtue of section 64(7).
- (6) If—
 - (a) the Keeper registers the deed, and
 - (b) as at the time of registration a plot of land to which the deed relates has not been registered,the Keeper is first to register that plot of land.
- (7) Subsection (8) applies where the last completed title to a subordinate real right is recorded in the Register of Sasines and a notice of title to that right is registrable by virtue of section 4A of the Conveyancing (Scotland) Act 1924 (c.27).
- (8) If—
 - (a) the Keeper registers the notice of title, and
 - (b) as at the time of registration the land in respect of which the subordinate real right is constituted consists of a plot of land which has not been registered,the Keeper is first to register that plot of land.
- (9) Subsection (10) applies where a standard security is granted over an unregistered subordinate real right.
- (10) If—
 - (a) the Keeper registers the standard security, and
 - (b) as at the time of registration the land in respect of which the subordinate real right is constituted consists of a plot of land which has not been registered,the Keeper is first to register that plot of land.

NOTE

Section 62 deals with cases of first registration that are (unlike section 60 and 61 cases) transaction-linked but where (unlike section 59 cases) there is no application by an unrecorded holder (uninfert proprietor). For example, once Closure Step III has happened (see section 64), if a deed by a third party (such as a charging order) is presented for registration, the Keeper must register the property (and the deed). Were that not the rule, the charging order could not be registered at all. The closure steps are discussed in Part 33 of the Report.

63 Notification of registration under section 61 or 62

- (1) In so far as the Keeper considers it reasonably practicable to do so and by such means as the Keeper considers appropriate, on registering a plot of land under section 61 or 62 the Keeper is to notify accordingly—
 - (a) the proprietor, and
 - (b) if the Keeper thinks fit, any other person.
- (2) Subsection (1) is subject to the provisions of any rules made under section 95(1)(g) or (h).
- (3) A failure to comply with subsection (1) or with any rules so made does not affect the competence or validity—
 - (a) of the registration of the plot of land in question, or
 - (b) in the case of registration under section 62, of the registration of the assignation or, as the case may be, the sublease, deed, notice of title or standard security.

NOTE

Section 63 deals with notification by the Keeper that a property has been registered for the first time. This is particularly relevant in connection with cases under sections 61 and 62, for in those cases there has been no registration application by the owner.

64 Where recording document in Register of Sasines of no effect

- (1) The recording of a deed in the Register of Sasines has no effect in so far as the deed relates to a registered plot of land or to a registered lease.
- (2) The recording of a disposition in the Register of Sasines has no effect.
- (3) The recording of a lease in the Register of Sasines has no effect.
- (4) The recording of an assignation of a lease in the Register of Sasines has no effect.
- (5) The recording, on or after such day as is prescribed, of a standard security in the Register of Sasines has no effect.
- (6) The recording, on or after such day as is prescribed, of any deed in the Register of Sasines has no effect.
- (7) On and after the day prescribed under subsection (6), any deed the recording of which would, by virtue of that subsection, have no effect is (subject to the provisions of this Act) registrable in the Land Register.
- (8) Where by virtue of this section the recording of a deed, disposition, lease, assignation or standard security in the Register of Sasines would have no effect, the Keeper is to reject any application to record it.

- (9) Subsection (2) is without prejudice to sections 4 (creation of real burden) and 75 (creation of positive servitude by writing: deed to be registered) of the Title Conditions (Scotland) Act 2003 (asp 9).
- (10) In the application of subsection (2) or (8) to a case in which transfer of ownership is by virtue of compulsory acquisition, the reference in the subsection in question to a “disposition” is to be construed in accordance with section 59(11).
- (11) Any day prescribed under subsection (5) or (6) is to be a day no earlier than that specified under section 60(2).
- (12) In subsections (5), (6) and (11), “prescribed” means prescribed by the Scottish Ministers, by order made by statutory instrument, after consultation with the Keeper.

NOTE

Section 64 is about the progressive closure of the Register of Sasines, eventually leading to the time when it is wholly closed to the intake of deeds. The section says both that the Keeper is not to accept specified classes of deed into the Register of Sasines (see subsection (8)) but also that if for any reason such a deed nevertheless is recorded, the recording is of no effect.

Subsection (1) continues the rule that exists under the 1979 Act that once property has been registered, deeds affecting that property cannot enter the Register of Sasines.

Subsection (2) closes the Register of Sasines to the intake of dispositions. This provision will apply as from the commencement of the new legislation, and is an aspect of what Part 33 of the Report calls "Closure Step I" (see paragraphs 33.32 and 33.33 of the Report). It applies to all dispositions, whether onerous or gratuitous. Subsections (3) and (4) are the other two aspects of Closure Step I. Subsection (2) is subject to the special case of title conditions, where it may be necessary to record a disposition in the Register of Sasines to meet the requirement of "dual registration". This special case is set out in subsection (9).

Subsection (5) represents what Part 33 of the Report calls "Closure Step II" (see paragraph 33.34 of the Report). It closes the Register of Sasines to the intake of standard securities. It takes effect as from a date to be prescribed.

Subsection (6) represents what Part 33 of the Report calls "Closure Step III" (see paragraph 33.35 of the Report). It closes the Register of Sasines to the intake of any deed whatsoever. It takes effect as from a date to be prescribed.

Subsection (7) makes it clear that once Closure Step III has been reached, any deed that could (had it not been for that closure) have been recordable in the Register of Sasines is registrable in the Land Register. (The words "subject to the provisions of this Act" make it clear that the deed in question must be acceptable. In other words, the subsection does not mean that bad deeds must be accepted for registration.) If the property itself is not registered, the Keeper must register it: see section 62.

Subsection (8) is self-explanatory.

For subsection (9) see the note to subsection (2). Subsection (9) will become inoperative once Closure Step III is reached.

65 Registration by virtue of Part 8: completion

- (1) On registering a plot of land by virtue of this Part the Keeper is to—
 - (a) create a new title sheet,
 - (b) make such other changes to the title sheet record as are requisite,

- (c) create a new cadastral unit,
- (d) make such other changes to the cadastral map as are requisite, and
- (e) copy into the archive record any document which—
 - (i) has been submitted to the Keeper (or, where registration is other than on application, is reasonably available to the Keeper), and
 - (ii) is relevant to the accuracy of the register.
- (2) Subsection (1)(e) is subject to section 12(3).
- (3) Without prejudice to the generality of the paragraph in question, changes under—
 - (a) paragraph (b) of subsection (1) may include cancelling a title sheet,
 - (b) paragraph (d) of that subsection may include cancelling a cadastral unit.
- (4) In a case where—
 - (a) registration is other than on application, and
 - (b) any name or designation to be entered in the new title sheet to be created cannot be determined, or cannot with reasonable certainty be determined, by the Keeper,
 the Keeper may, in place of or as part of that entry, enter a statement that the name or designation is not known or as the case may be is not known with reasonable certainty.

NOTE

Section 65 sets out what the Keeper is to do in effecting the first registration of a plot of land. The rules are generally self-explanatory. Subsection (4) deals with the case where the identity of the owner, or any other person holding a right in the land, is uncertain. It says that the Keeper can simply state the uncertainty on the title sheet.

66 Orders under this Part: different provision for different areas

Different provision may be made under section 60(2)(b) or 64(5) or (6) for different areas (the reference in section 64(7) to “the day prescribed” being construed accordingly).

NOTE

Section 66 allows Closure Steps II and III to take place at different times in different counties. Thus for example it would be competent for Renfrewshire, which has been operational in the Land Register since 1981, to move through these steps on a different and earlier schedule than (for example) Sutherland, which did not become operational until 2003.

67 Power to extend application of sections 35 to 38

After consultation with the Keeper, the Scottish Ministers may, by order made by statutory instrument, provide that sections 35 to 38 are to apply in relation to—

- (a) an unregistered plot of land, or
- (b) an unregistered but registrable lease,

as they apply in relation to a registered plot of land or a registered lease (but with such modifications as they may specify in the order).

NOTE

The advance notice scheme set out in Part 4 of the draft Bill is designed to work with registered property. Section 67 provides that if it thought desirable to extend it to unregistered property that could be done by order made by the Scottish Ministers.

PART 9

MISCELLANEOUS AND GENERAL

Miscellaneous provisions

68 Deduction of title

If a deed sought to be registered is one validly granted by the unregistered holder of—

- (a) the land, or
- (b) as the case may be, a real right in land,

to which the deed relates then the deed need not deduce title.

NOTE

Section 68, like section 69, is about uncompleted titles, for which see Part 15 of the Report.

Section 68 re-enacts the rule in the 1979 Act that clauses of deduction of title are not necessary. But it makes one change. Under the 1979 Act, the rule is that deeds relating to property in the Land Register do not have to have such a clause. Under section 68, the rule is that deeds to be registered in the Land Register do not have to have such a clause. Thus under current law, a disposition inducing first registration, if granted by an unrecorded holder (uninfert proprietor), must have a clause of deduction of title, whereas under section 68 such a clause would not be required. As under current law, deeds recorded in the Register of Sasines will still need (where appropriate) such clauses.

The appropriate midcouplets are still necessary even if no clause of deduction of title is required. That is the position under the 1979 Act and it continues to be the position under section 68. Though this point is perhaps self-evident, section 68 confirms it by the words "validly granted".

69 Completion of title

- (1) The Conveyancing (Scotland) Act 1924 (c.27) is amended as follows.
- (2) In section 4 (completion of title)—
 - (a) for the words "by a title which has not been completed by being recorded in the appropriate Register of Sasines, may" there is substituted "may, if the last recorded title to the right is recorded in the General Register of Sasines," and
 - (b) the title of the section as so amended becomes "Completion of title: General Register of Sasines".
- (3) After section 4 there is inserted—

"4A Completion of title: Land Register

Any person having right either to land or to a heritable security may complete his title by registration in the Land Register of a notice of title in or as nearly as may be in the terms of the form of Schedule BA to this Act.

4B Further provision as regards completion of title

- (1) If it is competent to register a disposition or assignation in the Land Register, it is not competent for the disponee or assignee to complete his title in the manner provided for in section 4 of this Act.
- (2) In this section and in section 4A of this Act, “Land Register” means the Land Register of Scotland.”.

NOTE

Section 69 is about notices of title, for which see Part 15 of the Report. It amends the Conveyancing (Scotland) Act 1924. Under the 1979 Act an unrecorded holder (uninfert proprietor) of registered property can complete title without using a notice of title. By contrast, section 69(3) requires the use of a notice of title, as in the Register of Sasines. The draft Bill provides, for Land Register cases, a simplified style of notice. (The rather complex statutory styles for use in the Register of Sasines are not altered.)

The section provides that an uninfert proprietor of an as-yet unregistered property has a choice of methods of completing title: either to record a notice of title in the Register of Sasines or to register a notice of title in the Land Register. One small exception applies where the last recorded title is not in the General Register of Sasines. (For example it is in a Burgh Register of Sasines or is a pre-1617 title.) In that case the option of recording a notice of title in the Register of Sasines does not apply: see section 69(2)(a).

70 Extracts and certified copies: general

- (1) The Keeper is, on application by any person, to issue to that person an extract, authenticated as the Keeper thinks fit—
 - (a) of, or of any part of, a title sheet as at such date as the applicant may specify,
 - (b) of any part of the cadastral map as at such date as the applicant may specify, or
 - (c) of, or of any part of, a document in the archive record.
- (2) The Keeper is, on application by any person, to issue to that person a certified copy of (either or both)—
 - (a) an application for registration which is pending,
 - (b) any document submitted with an application for registration which is pending.
- (3) The Keeper is to issue the extract, or as the case may be the certified copy, as an electronic document if (and only if) the applicant elects to receive it as an electronic document.
- (4) For the purposes of subsection (1)(a) or (b), the Keeper may take for the cadastral map’s base map either—
 - (a) the base map as at the date on which the extract is issued, or
 - (b) the base map as at some earlier date,as the Keeper thinks fit.
- (5) The Keeper is to specify, in any extract issued under subsection (1)(a) or (b), the base map date opted for under subsection (4).

NOTE

Section 70 is about the issue by the Keeper of extracts and certified copies. See generally Part 8 of the Report. Under the draft Bill, the apparatus of "land certificates", "charge certificates" and "office copies",

as provided for in the 1979 Act, would disappear. The Keeper would simply issue extracts from the Land Register.

Extracts may be given of title sheets, of any part of the Cadastral Map, and of any document in the Archive Record. (Subsection (1).) As for the Application Record, certified copies are to be issued. (Subsection (2).) Extracts and certified copies are to be either paper or electronic, as requested. (Subsection (3).) Thus someone could ask for an electronic extract of a paper deed, or a paper extract of an electronic deed.

Subsection (1) provides that the Keeper must issue extracts not only of the Register as it is at the time in question, but also as it was as at the date specified by the person asking for the extract. This is a central aspect of the policy that the Land Register should cease to have the non-historical nature laid down by the 1979 Act. See paragraphs 8.10 to 8.13 of the Report.

71 Evidential status of extract or certified copy

- (1) An extract issued under subsection (1)(a) or (b) of section 70 or a certified copy issued under subsection (2)(a) of that section is to be accepted for all purposes as sufficient evidence of the contents—
 - (a) of the original, and
 - (b) of any matter relating to the original which appears on the extract or copy.
- (2) An extract issued under subsection (1)(c) of that section or a certified copy issued under subsection (2)(b) of that section is to be accepted for all purposes as sufficient evidence of the contents—
 - (a) of the document as submitted to the Keeper, and
 - (b) of any matter relating to the document as so submitted which appears on the extract or copy.

NOTE

Section 71 is about the evidential status of extracts and certified copies. Under current law, even if the Keeper does issue a copy of a document, the copy has no particular evidential status (except for the case mentioned in section 6(5) of the 1979 Act.)

72 Liability of Keeper in respect of extracts, certified copies and other information

- (1) The Keeper—
 - (a) in issuing an extract or certified copy under section 70, is to be taken to warrant that it is a true extract or as the case may be that it is a true copy, and
 - (b) in providing (in writing or in such other manner as provision is made for in an order under section 90(1)(b)) other information as to the contents of the register, is to be taken to warrant that the information is correct.
- (2) Subsection (1) is subject to section 74.

NOTE

Section 72(1)(a) says that the Keeper warrants that an extract or certified copy is a true extract or true copy. If the warranty is breached then the Keeper is potentially liable in damages. The warranty does not apply to the contents of the extract or copy. For example, if a deed is void, and an extract is requested, the Keeper, in issuing the extract, does not warrant the validity of the deed.

Section 72(1)(b) says that the Keeper warrants the accuracy of information that is issued, so long as it is issued in writing or in other specified format. Thus for example information given down the telephone would not fall under this section.

Section 72 is similar to section 12(1)(d) of the 1979 Act. For discussion see Part 27 of the Report.

73 Loss etc. of document lodged with Keeper

- (1) If, in consequence of a document being lost, damaged or destroyed while lodged with the Keeper, a person suffers loss, the person is entitled to be indemnified by the Keeper in respect of the loss suffered.
- (2) Subsection (1) is subject to section 74.

NOTE

Section 73 is self-explanatory. It is similar to section 12(1)(c) of the 1979 Act.

74 Compensation payable by virtue of section 72 or 73: circumstances where liability is excluded

The Keeper has no liability, by virtue of section 72 or 73—

- (a) in so far as a claimant's loss could have been avoided had certain measures been taken by the claimant, being measures which it would have been reasonable for the claimant to take,
- (b) in so far as a claimant's loss is too remote, or
- (c) for non-patrimonial loss.

NOTE

Section 74 limits the Keeper's liability where claims are made under sections 72 or 73.

75 Performance of Keeper's functions during vacancy in office or during period of incapability

- (1) This section applies in respect of any period during which—
 - (a) there is a vacancy in the office of the Keeper, or
 - (b) the Keeper is incapable of acting or of making a decision,being a period as respects which no person has been authorised by the Scottish Ministers, under section 1(6) of the Public Registers and Records (Scotland) Act 1948 (c.57), to perform the functions of the Keeper.
- (2) An act performed, or decision made, by a member of the Keeper's staff is of the same effect as if the act or decision were the Keeper's own provided that it would have been of that effect had there been no such vacancy in office or as the case may be no such incapability.

NOTE

The Public Registers and Records (Scotland) Act 1948 enables the Ministers to appoint, if necessary, an acting Keeper. But such an appointment might not happen immediately. Registration decisions taken in the

absence of a Keeper or acting Keeper might be invalid. This section ensures that such decisions would not be invalid. See further paragraphs 38.9 and 38.10 of the Report.

76 Note of date on which entry in register is made

When an entry is made in the register there is to be included in that entry the date on which it is made.

NOTE

This section is self-explanatory.

77 Automated Registration of Title to Land

- (1) Only a person authorised by the Keeper, whether directly or indirectly, may use the ARTL system.
- (2) An application may be made using the ARTL system only if the document sought to be registered is a deed of a kind specified by the Keeper in a direction registered in the Books of Council and Session.
- (3) In subsections (1) and (2), “ARTL system” means the computer system, managed and controlled by the Keeper, which enables—
 - (a) the creation of electronic documents,
 - (b) the electronic generation and communication of applications for registration, and
 - (c) automated registration.

NOTE

Section 77(1) provides that admission to the ARTL system requires the Keeper's permission. By contrast, anyone is free to make a registration application outwith the ARTL system. Subsection (2) provides for the Keeper to prescribe what types of deed are eligible for the ARTL system.

Section 77 should be read in conjunction with section 95(1)(q) which provides for statutory instrument to regulate ARTL. Section 95(1) will, among other things, supersede the current practice whereby the Keeper polices the system through a contract that users must sign up to.

Electronic conveyancing is discussed in Part 34 of the Report. For ARTL, see paragraphs 34.58 to 34.60.

78 Warrant to place a caveat etc.

- (1) This section applies to proceedings in the Court of Session or before the sheriff or the Lands Tribunal for Scotland, being—
 - (a) proceedings for the reduction of a registered deed on the ground that it is voidable,
 - (b) proceedings which could result in a judicial determination that the register is inaccurate, or
 - (c) proceedings for an order which, if granted, would be registrable under section 8A(2) of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (c.73) (registration of order for rectification).

- (2) At any time while the proceedings are in dependence, a party may apply to the court or tribunal for warrant to place a caveat on the title sheet of a plot of land to which the proceedings relate.
- (3) The court may, if satisfied as to the matters mentioned in subsection (4), make an order granting the warrant applied for.
- (4) The matters are that—
 - (a) the applicant has a *prima facie* case on the merits of the proceedings,
 - (b) were warrant for placing the caveat not granted, there is a real and substantial risk that enforcement of any decree or order in the proceedings granted in favour of the applicant would be defeated or prejudiced by reason of the other party—
 - (i) being insolvent or verging on insolvency, or
 - (ii) being likely to deal with the plot of land, and
 - (c) in all the circumstances, including the effect which granting the warrant may have on any person having an interest, it is reasonable to make the order granting it.
- (5) The onus is on the applicant to satisfy the court that the order granting the warrant should be made.
- (6) A person who, on a warrant granted—
 - (a) under subsection (2), has placed a caveat, or
 - (b) under this subsection, has renewed a caveat,
 may at any time discharge the caveat or apply, to the court or tribunal which granted that warrant, for warrant to renew it.
- (7) Any other person with an interest may at any time apply to that court or tribunal for the caveat to be recalled.
- (8) A caveat—
 - (a) placed, on a warrant granted under subsection (2), expires 12 months after it is so placed, or
 - (b) renewed, on a warrant granted under subsection (6), expires 12 months after it is so renewed,
 unless discharged, recalled or renewed (or, as the case may be, further renewed) before the expiry of the period in question.
- (9) After consultation with the Keeper, the Scottish Ministers may, by order made by statutory instrument, amend (either or both)—
 - (a) paragraph (a) of subsection (8),
 - (b) paragraph (b) of that subsection,
 so as to provide for a different period before expiry from that for the time being mentioned in the paragraph in question.

NOTE

This section introduces caveats, discussed in Part 32 of the Report. A caveat is an entry on a title sheet, placed there by the authority of the court (or Lands Tribunal) while an action is pending, the purpose of which is to ensure that nothing can happen during the course of the action to defeat the rights (such as they may be) of the person in whose favour the caveat is granted. (See subsection (2).) Caveats replace notices

of litigiousity, and accordingly the statutory provisions about the latter are disapplied to the Land Register by schedule 8.

Subsection (1) sets out the types of action in relation to which a caveat is possible. Subsection (4) provides the grounds for a warrant for caveat to be granted. This, and subsection (5), follow closely the rules for warrants for diligence on the dependence, introduced by section 169 of the Bankruptcy and Diligence etc. (Scotland) Act 2007.

Subsections (6), (7) and (8) deal with the discharge (by the caveator), recall (by the court) and renewal of a caveat. Subsection (8) provides that a caveat does not last more than 12 months (or other period as may be prescribed) unless it is renewed. That ensures that spent caveats will expire, and therefore not blight title sheets indefinitely, even if they are not formally recalled or discharged.

79 Entry on title sheet of statement concerning enforcement rights

- (1) Subsections (2) and (3) apply where the Keeper is satisfied that a real burden subsists by virtue of—
 - (a) any of sections 52 to 56 of the Title Conditions (Scotland) Act 2003 (asp9) (various implied rights of enforcement), or
 - (b) section 60 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp5) (preserved right of Crown to maritime burdens).
- (2) The Keeper may, and on the application of any person having an interest shall, enter on the title sheet of the burdened property—
 - (a) a statement that the real burden subsists by virtue of the section in question, and
 - (b) provided that there is readily available to the Keeper information sufficient to enable the Keeper to identify and describe the benefited property, a description of that property.
- (3) And where that statement is so entered and the proviso set out in subsection (2)(b) is met, the Keeper is also to enter the statement on the title sheet of the benefited property together with—
 - (a) a description of the burdened property, and
 - (b) if they do not already appear on that title sheet, the terms of the real burden.
- (4) Section 58 of the Title Conditions (Scotland) Act 2003 (asp9) (duty of Keeper to enter on title sheet statement concerning enforcement rights) is repealed.

NOTE

This section replaces section 58 of the Title Conditions (Scotland) Act 2003 with a more flexible approach. For discussion see paragraphs 10.19 to 10.30 of the Report.

80 Transfer by disposition

- (1) A disposition of land may be registered, the effect of registration of a valid such disposition being to transfer ownership.
- (2) An unregistered disposition does not transfer ownership.
- (3) Subsections (1) and (2) are subject to such other provision as is made by this Act.
- (4) In subsection (1), “land” includes land held on udal title.

NOTE

Before the Abolition of Feudal Tenure etc (Scotland) Act 2000, the transfer of title by disposition was dealt with by section 15 of the Titles to Land Consolidation (Scotland) Act 1868. That section was couched in feudal terms, and so section 4 of the 2000 Act made new provision, in non-feudal language. The section required amendment as a result of the reforms to the land registration system, and section 80 so provides. Section 80 also makes it clear that udal property is covered. (Udal property exists in Orkney and Shetland.) This does not change the law. Udal property at present is covered by section 3 of the 1979 Act. Section 4 of the 2000 Act is repealed by section 98 and schedule 9.

81 Proper liferents

A deed to effect the creation of a proper liferent over land—

- (a) may be registered, or
- (b) may be recorded in the Register of Sasines,

as the case may be; and the proper liferent is not created before the deed is registered or so recorded.

NOTE

The creation of proper liferents in land is currently dealt with by section 65 of the Abolition of Feudal Tenure etc (Scotland) Act 2000. The section required amendment as a result of the reforms to the land registration system. Section 65 of the 2000 Act is repealed by section 98 and schedule 9.

82 Notification to Scottish Ministers of certain applications

- (1) Where an application under Part 3, or section 59, for registration is rejected on the ground that (or on grounds which include the ground that) the Keeper is not satisfied that the application does not relate to a transfer prohibited—
 - (a) by section 40(1) of the Land Reform (Scotland) Act 2003 (asp2) (effect of registration of community interest in land), or
 - (b) under section 37(5)(e) of that Act (prohibition pending determination as to whether a community interest in land is to be registered),the Keeper is to notify the Scottish Ministers accordingly and is to provide them with a copy of the application.
- (2) Subsection (1) does not apply where the only reason for the Keeper not being satisfied as mentioned in that subsection is that the application is not accompanied by a declaration required under section 43(2) of that Act (incorporation of certain declarations into deed giving effect to transfer).

NOTE

Section 66 of the Land Reform (Scotland) Act 2003 amended the 1979 Act so as to require the Keeper to notify the Scottish Ministers about certain events. Section 82 repeats these provisions.

83 Amendment of Registration of Leases (Scotland) Act 1857 and of Requirements of Writing (Scotland) Act 1995

- (1) Schedule 4, which contains amendments of the Registration of Leases (Scotland) Act 1857 (c.26), has effect.

- (2) Schedule 5, which contains amendments of the Requirements of Writing (Scotland) Act 1995 (c.7), has effect.

NOTE

Section 83(1) introduces schedule 4, which makes extensive amendments to the Registration of Leases (Scotland) Act 1857. These amendments are discussed in the explanatory notes to schedule 4. The Report recognises that the 1857 Act stands in need of review.

Section 83(2) introduces schedule 5, which makes extensive amendments to the Requirements of Writing (Scotland) Act 1995, so as to allow electronic conveyancing.

84 Power to amend section 6 of the Land Registers (Scotland) Act 1868

If, under section 23(3)(b), the Scottish Ministers amend this Act, they may correspondingly amend section 6 of the Land Registers (Scotland) Act 1868 (c.64) (which provides for registration in the General Register of Sasines) and make such other amendments to that Act as are consequential upon that amendment to that section.

NOTE

If in future the "day unit" of registration is changed, for instance to "hour units", then the question of consequential amendments to the Land Registers (Scotland) Act 1868 would arise. This section confers the necessary powers.

85 Rights of relief

In section 50 of the Conveyancing (Scotland) Act 1874 (c.94) (form and effect of assigning right of relief or other right affecting land)—

- (a) the existing provisions become subsection (1), and
- (b) after that subsection there is added—

“(2) It is not necessary, in connection with a deed relating to a plot or lease registered in the Land Register of Scotland—

- (a) to include an assignation of an obligation or right of relief, or
- (b) to narrate the series of writs by which the grantor of the deed became entitled to enforce any such obligation or right,

if the obligation or right is entered in the title sheet of the plot or lease.

- (3) Accordingly, in such a case as is mentioned in subsection (2) of this section—
 - (a) subsection (1) of this section and Schedule M hereto annexed do not apply as regards the deed, and
 - (b) the deed imports, for all purposes, a valid and completed assignation of the obligation or right.”.

NOTE

Section 15(4) of the 1979 Act effected a minor conveyancing reform which is re-enacted by section 85.

86 Positive prescription: validity of real right

- (1) For section 1 of the Prescription and Limitation (Scotland) Act 1973 (c.52) (validity of right) there is substituted—

“1A Validity of real right: possession founded on registration in the Land Register of Scotland

- (1) Subsection (2) below applies where—
- (a) land has been possessed by a person, or by a person and his successors, for a continuous period of ten years openly, peaceably and without any judicial interruption,
 - (b) the possession is founded on, and follows, registration of the person in the Land Register of Scotland as being a person holding a real right in that land, and
 - (c) such registration of the person (or of the person and then of his successors) subsists throughout the period.
- (2) As from the expiry of the period the real right, so far as relating to that land, shall be exempt from challenge.
- (3) Subsection (2) above shall not apply where possession was founded on registration proceeding on a forged deed if the person registered was aware of the forgery at the time of registration.
- (4) This section does not apply as respects a real burden, a servitude or a public right of way.
- (5) In the computation of a prescriptive period for the purposes of this section in a case where the possessor is an adjudging creditor and registration is of the extract decree of adjudication, any period before the expiry of the legal shall be disregarded.
- (6) Where, in any question involving—
- (a) any foreshore,
 - (b) any salmon fishings, or
 - (c) the seabed of the territorial sea of the United Kingdom adjacent to Scotland,

this section is pled against the Crown as owner of the regalia, subsections (1) and (2) above shall have effect as if for the words “ten years” in paragraph (a) of subsection (1) there were substituted “twenty years”.

- (6) This section is without prejudice to section 2 of this Act.

1B Validity of real right: possession founded on the recording of a deed in the Register of Sasines

- (1) Subsection (2) below applies where—
- (a) land has been possessed by a person, or by a person and his successors, for a continuous period of ten years openly, peaceably and without any judicial interruption, and

- (b) the possession is founded on, and follows, the recording of a deed in the Register of Sasines, being a deed sufficient in respect of its terms to constitute in favour of that person a real right in—
 - (i) that land, or
 - (ii) land of a description habile to include that land.
- (2) As from the expiry of the period the real right, so far as relating to that land, shall be exempt from challenge.
- (3) Subsection (2) above shall not apply where possession was founded on the recording of a deed which is invalid *ex facie* or is forged.
- (4) A continuous period of possession of land, being a period founded as mentioned in subsection (1)(b) above, is not interrupted by reason only of the registration during that period of the person, or of any of his successors, in the Land Register of Scotland as being a person holding a real right in that land.
- (5) Subject to subsection (4) above, this section does not apply in relation to land registered in the Land Register of Scotland.
- (6) This section does not apply as respects a real burden, a servitude or a public right of way.
- (7) In the computation of a prescriptive period for the purposes of this section in a case where the deed recorded is a decree of adjudication for debt, any period before the expiry of the legal shall be disregarded.
- (8) Where, in any such question as is mentioned in section 1A(5) above, this section is pled against the Crown as owner of the regalia, subsections (1) and (2) above shall have effect as if for the words “ten years” in paragraph (a) of subsection (1) there were substituted “twenty years”.
- (9) This section is without prejudice to section 2 of this Act.”.
- (2) In section 5 (further provision supplementary to sections 1, 2 and 3 of the Prescription and Limitation (Scotland) Act 1973), after subsection (1) there is inserted—
 - “(1A) Any reference in those sections to a real right’s being exempt from challenge as from the expiration of some continuous period is to be construed, if the real right of the possessor was void immediately before that expiration, as including reference to acquisition of the real right by the possessor.”.
- (3) Subsections (1) and (2) do not apply in relation to a continuous period which has expired before the designated day.

NOTE

The Prescription and Limitation (Scotland) Act 1973 required some minor amendment as a result of the reforms to the land registration system. The opportunity has been taken to divide section 1 into two sections, one dealing with the Land Register and the other with the Register of Sasines. This change makes the provisions easier to read: in particular, the reader who is concerned only with the Land Register is not distracted by provisions, which will eventually become spent, about the Register of Sasines.

As well as minor amendments, section 86 makes a major change in that it deletes the previous rule that positive prescription does not run on an indemnified Land Register title. See paragraph 35.3 of the Report.

Finally, section 86(2) adds to section 5 of the 1973 Act a new subsection (1A). There is at present some uncertainty as to what the expression "exempt from challenge" means, and subsection (1A) removes that uncertainty. See paragraphs 35.5 to 35.9 of the Report.

Part 35 of the Report discusses the reforms to the 1973 Act.

87 Consultancy or advisory services

- (1) The Keeper may provide consultancy or advisory services in relation to the law and practice of registration (whether or not of land).
- (2) The fees for those services are to be such as may be agreed between the Keeper and those provided with them.
- (3) If the Keeper considers it expedient to do so in connection with the provision of those services, the Keeper may (either or both)—
 - (a) form, or participate in the formation of, a company or other entity,
 - (b) purchase, or invest in, a company or other entity.
- (4) This section is without prejudice to the Keeper's powers and duties other than by virtue of this section.

NOTE

Section 105 of the Land Registration Act 2002 authorises HM Land Registry to engage in remunerated consultancy work. Paragraph 38.11 of the Report recommends a similar provision for the Scottish legislation.

General provisions

88 Appeals

- (1) An appeal may be made to the Lands Tribunal for Scotland, on a question of fact or on a point of law, against any decision of the Keeper under this Act.
- (2) Subsection (1) is without prejudice to any other right of recourse, whether under an enactment or under a rule of law.

NOTE

Section 88 re-enacts the substance of section 25(1) and (2) of the 1979 Act. Subsection (3) is not re-enacted. Its provisions are implied by the general law. Subsection (4) is not re-enacted since the Keeper's power to refuse applications for voluntary registration is to disappear.

89 The designated day

The Scottish Ministers may, for the purposes of this Act, by order made under this section by statutory instrument, designate a day (in this Act referred to as “the designated day”), being a day which falls not less than 6 months after the order is made.

NOTE

Section 89 is self-explanatory.

90 Fees and information

- (1) The Scottish Ministers may, in relation to any register under the management and control of the Keeper, by order made by statutory instrument—
 - (a) fix fees payable for registering, recording or entering in the register in question,
 - (b) make provision as regards information to be made available by the Keeper and the manner in which it is to be made available,
 - (c) make provision as to the fees (if any) payable for such information,
 - (d) make provision as to the method of paying any fees mentioned in paragraph (a) or (c), and
 - (e) authorise the Keeper to fix, in such circumstances and subject to such limitations and conditions as may be specified in the order, any fees so mentioned.
- (2) Any order under this section may make different provision for different cases or for different classes of case.
- (3) Any order under this section is to be without prejudice to the status which a register to which it relates has as a public register.
- (4) The amount of any fees fixed by virtue of this section is not to exceed what is reasonably sufficient for defraying the expenses of the Keeper.
- (5) But, without prejudice to the generality of subsection (4), those expenses are to be taken to include expenses—
 - (a) of improving the systems of—
 - (i) registering and recording, and
 - (ii) making information available, and
 - (b) of bringing all titles to land into the Land Register of Scotland.
- (6) No writ is to be accepted for recording in the Register of Sasines unless such fee as is payable in that respect by virtue of this section is paid.
- (7) In subsections (1)(b) and (5)(a)(ii), “information”—
 - (a) includes, without prejudice to the generality of that subsection, information in the form of extracts and certified copies, but
 - (b) does not include information provided under section 87(1).
- (8) This section is without prejudice to section 70.

NOTE

The subject matter of section 90 is discussed in Part 8 of the Report. Section 90 replaces section 25 of the Land Registers (Scotland) Act 1868 (which is repealed by section 98 and schedule 9). It provides more detail than section 25. Moreover, whereas section 25 of the earlier Act is headed "Fees", section 90 of the draft Bill is headed "Fees and information", because it goes further than section 25 in providing for rules to be made about what kinds of bundles of information the Keeper is to provide and as to the manner of provision.

Section 90(1) allows for the Scottish Ministers to set fees for registrations and also for the provision of information. Like section 25 of the 1868 Act, it is not limited to the Land Register but applies to all registers within the Keeper's stable.

Section 90(2) allows different rules to be made for different types of case. For example, rules could provide that the online version of the Land Register would be available in its full form to certain types of user (eg solicitors) but only in a redacted form to other types of user.

Subsection (3) establishes that nothing done under the section is to prejudice the basic principle, set out in section 1 of the draft Bill, that the Land Register is a public register. For example, suppose that the online version were a redacted version. A member of the public would still have the right to request an extract of a given title sheet, and that extract would have to be a full extract, not a redacted one. No rule under this section could affect that right.

Subsections (4) and (5) mean that the Keeper is to run the registers on a not-for-profit basis. Section 25 of the 1868 Act has a similar provision.

Subsection (6) re-enacts the Land Registers (Scotland) Act 1995, which is repealed by section 98 and schedule 9.

91 Savings and transitional provisions etc.

- (1) Schedule 6, which contains savings and transitional provisions, has effect.
- (2) The Scottish Ministers may by order made by statutory instrument make—
 - (a) such further savings and transitional provisions, and
 - (b) such incidental, supplemental, consequential or transitory provisions,as they consider necessary or expedient for the purposes of, or in consequence of, this Act or any order or rules made under this Act.
- (3) An order under subsection (2) may amend or repeal any enactment.

NOTE

Section 91(1) gives effect to schedule 6. Explanatory notes on schedule 6 will be found below.

Subsections (2) and (3) give power to the Scottish Ministers to make consequential orders. The scope of the power is appropriate in relation to a Bill of such complexity. A similarly-worded provision can be found in section 128 of the Title Conditions (Scotland) Act 2003.

92 Interpretation

- (1) In this Act, unless the context otherwise requires—
 - “advance notice” has the meaning given by section 35(1),
 - “application record” has the meaning given by section 13(1),
 - “archive record” has the meaning given by section 12(1),
 - “ascertainment deed” has the meaning given by section 31(1) and (2),
 - “the base map” is to be construed in accordance with section 3(5),
 - “cadastral map” has the meaning given by section 3(1),
 - “date of application” is to be construed in accordance with section 19(3),
 - “date of registration” is to be construed in accordance with section 23(1),
 - “deed” means a document registrable under an enactment (and includes a decree so registrable),

“designation” includes—

- (a) in the case of a natural person, the person’s date of birth if known (or if that date is not known the person’s approximate date of birth),
- (b) in any other case—
 - (i) the legal system under which the person is incorporated or otherwise established,
 - (ii) if a number has been allocated to the person under section 1066 of the Companies Act 2006, that number, and
 - (iii) any other identifier (whether or not a number) peculiar to the person, and
- (c) if the person designated has a right in land in a special capacity, a description of that capacity,

“the designated day” has the meaning given by section 89,

“enactment” includes—

- (a) an enactment comprised in, or in an instrument made under, this Act, and
- (b) a local and personal or private Act,

“existing title sheet” means a title sheet which is in existence immediately before the commencement of the designated day,

“heritable creditor” means the holder of a heritable security,

“heritable security” means—

- (a) a standard security, or
- (b) any other right in security over heritable property provided that it is not a right in security created as a floating charge,

“the Keeper” has the meaning given by section 1(3),

“land” includes—

- (a) buildings and other structures,
- (b) the seabed of the territorial sea of the United Kingdom adjacent to Scotland (including land within the ebb and flow of the tide at ordinary spring tides), and
- (c) other land covered with water,

“lease” includes sub-lease,

“plot of land” has the meaning given by sections 3(4) and 4(1),

“possession” includes civil possession (analogous expressions being construed accordingly),

“prescriptive claimant” has the meaning given by section 21(2),

“proprietor” means a person who has a valid completed title as proprietor to a plot of land,

“protected period” is to be construed in accordance with section 35(6),

“provisional shared plot” is to be construed in accordance with section 29(1),

“sharing plot” and “shared plot” are to be construed in accordance with section 16(2), and

“title sheet record” has the meaning given by section 5(1).

- (2) A deed on which an application for registration is based is “valid” for the purposes of this Act if—
 - (a) by the registration applied for a right would be acquired, varied or extinguished, or
 - (b) the deed is certificatory of an acquisition, variation or extinction which has taken place.
- (3) A notice registered, or intended or sought to be registered, under—
 - (a) section 10(2A) of the Title Conditions (Scotland) Act 2003 (asp9), or
 - (b) section 12(3) of the Tenements (Scotland) Act 2004 (asp11),(that is to say, a notice of potential liability for costs), is not a deed for the purposes of sections 35 and 36.
- (4) After consultation with the Keeper, the Scottish Ministers may by order made by statutory instrument amend subsection (3) so as to provide that other documents, being documents of a kind specified in the order, are not deeds for the purposes of those sections.
- (5) In relation to a title sheet for a registered lease, any reference in this Act to a proprietor is (except in section 14) to be construed as a reference to the tenant, to a proprietorship section as a reference to a tenancy section and to ownership in common as a reference to tenancy in common.
- (6) The Scottish Ministers may from time to time, after consultation with the Keeper, by order made by statutory instrument amend paragraph (b) of the definition of “designation” in subsection (1).

NOTE

Section 92 is the interpretation section. In subsection (1) only a few of the definitions call for comment.

In subsection (1) "designation" is defined to include date of birth (for natural persons) and registered number (companies). Subsection (6) provides that the Scottish Ministers can amend the definition. The subject of designation is discussed in paragraphs 4.18 to 4.24 of the Report.

The definition of "land" is similar to the definition in section 28 of the 1979 Act but makes it clear that the territorial seabed is included.

"Possession" is defined as including civil possession, ie indirect possession as well as direct (natural) possession. For example if an owner lets land to a tenant, the tenant has natural possession and the owner (landlord) has civil possession.

"Proprietor" is defined as meaning someone with a valid completed title as proprietor. Thus an unrecorded holder (uninfert proprietor) is not a "proprietor" within the meaning of the Bill.

In subsection (2) the concept of a "valid" deed is defined. A voidable deed that has not been avoided at the time of the application is a valid deed.

Subsections (3) and (4) provide that certain deeds are not to be reckoned as deeds for the purposes of the provisions about advance notices.

93 References to “registering” etc. in the Land Register of Scotland

Unless the context otherwise requires—

- (a) any reference, however expressed, in any enactment (other than this section) to “registering” a document in the register, is to be construed as including a reference to giving effect to that document in accordance either with section 22 or with section 65; and
- (b) cognate expressions are to be construed accordingly.

NOTE

Section 93 is self-explanatory.

94 Interpretation of references in certain other enactments to the Register of Sasines and to the recording of a deed in that register

- (1) Any reference, however expressed, in any Act passed before, or during the same session as, the Land Registration (Scotland) Act 1979 (c.33) or in any enactment comprised in an instrument made before the passing of that Act—
 - (a) to the Register of Sasines, or
 - (b) to the recording of a deed in the Register of Sasines,is to be construed as including a reference to the Land Register of Scotland or, as the case may be, to the registration of the deed in the Land Register of Scotland.
- (2) Subsection (1) does not apply if the context otherwise requires.

NOTE

Section 94 is similar to section 29(2) of the 1979 Act. It is a "translation" provision, providing that in enactments made before the 1979 Act references to the Register of Sasines should be taken as including references to the Land Register, unless the context otherwise requires. However, there are two differences in approach.

In the first place, schedule 3 to the 1979 Act listed a number of provisions to which the "translation" did not apply. There is no equivalent in the draft Bill. Many of the provisions listed in schedule 3 to the 1979 Act have since been repealed anyway. In other cases the approach taken by the draft Bill has been to amend the earlier legislation to state that specified references to the Register of Sasines are not to be taken to apply also to the Land Register.

In the second place, several pre-1979 statutes are amended so that the references to the Register of Sasines are changed to references to the Register of Sasines or the Land Register as the case may be. For such statutes, therefore, the "translation" provision is not necessary. Two examples deserving particular mention are the Registration of Leases (Scotland) Act 1857, which is amended by schedule 4, and the Conveyancing and Feudal Reform (Scotland) Act 1970, which is amended by schedule 8.

These various amendments make it easier for anyone consulting the pre-1979 statute to see whether references to the Register of Sasines do or do not also apply to the Land Register. Nevertheless the general "translation" provision is still needed because of the great mass of pre-1979 legislation still in force, a mass which includes private statutes, local statutes, and statutory instruments.

95 Rules etc.

- (1) After consultation with the Keeper, the Scottish Ministers may, by order made by statutory instrument, make rules—
 - (a) regulating the making up and keeping of the register,
 - (b) regulating the procedure to be followed—
 - (i) by the applicant, and
 - (ii) by the Keeper,on any application for registration,
 - (c) as to how the Keeper is to proceed as regards any title sheet which includes (or purports to include) a *pro indiviso* share of an undelineated area of land,
 - (d) prescribing a form for an advance notice or for any application,
 - (e) as to the authentication of an advance notice or of any application,
 - (f) as to when the application record is open for the making of entries,
 - (g) as to persons to be notified of a decision taken by the Keeper,
 - (h) as to the means by which such notification is to be effected,
 - (i) requiring the Keeper to enter in the title sheet record such information as may be specified in the rules or authorising or requiring the Keeper to enter in that record such rights or obligations as may be so specified,
 - (j) as to what is required in describing land for the purposes of this Act,
 - (k) prescribing a period for the purposes of section 26,
 - (l) as to the extent of any obligation of the Keeper arising by virtue of section 39,
 - (m) as to the granting or upgrading, under subsection (6) of that section, of warranty,
 - (n) modifying the provision made by section 43(1) as to the quantification of compensation,
 - (o) as to the rate of interest payable by virtue of section 43, 52 or 55,
 - (p) prescribing a period for the purposes of section 35(8),
 - (q) as to—
 - (i) persons who may be authorised under subsection (1) of section 77 to use the ARTL system,
 - (ii) the kinds of deeds which may be authorised under subsection (2) of that section,
 - (iii) the suspension or revocation of a person's authorisation under that section,
 - (iv) the method of appeal against any such suspension or revocation,
 - (v) the imposition of obligations on persons using the ARTL system, and
 - (vi) the creation of deemed warranties (whether in favour of the Keeper or of other users) by persons using the ARTL system,
 - (r) as to the placing of a caveat by virtue of subsection (2) of section 78, or its renewal by virtue of subsection (6) of that section, and the effect of such a caveat,

- (s) regulating the procedure to be followed—
 - (i) by the applicant, and
 - (ii) by the Keeper,
 for the making of an entry under section 35(1) or 79(2), or
 - (t) concerning other matters and seeming to them to be necessary or expedient in order to give full effect to the purposes of this Act.
- (2) Rules under this section may make different provision for different cases or for different classes of case.
- (3) The Scottish Ministers may, in rules under this section, authorise the Keeper to modify or supplement, in such circumstances and subject to such limitations as may be specified in the rules, such provision as is made under any of paragraphs (b)(i), (d), (e), (f), (j) and (s)(i) of subsection (1) (or by virtue of this subsection).
- (4) A statutory instrument containing an order under—
- (a) any of paragraphs (a) to (h), (j), (k), (m) and (o) to (t) of subsection (1),
 - (b) subsection (13)(b) of section 21,
 - (c) paragraph (a), (c), (d) or (e) of section 90(1), or
 - (d) subsection (2) of section 91 (unless it is made by virtue of subsection (3) of that section),

is subject to annulment in pursuance of a resolution of the Parliament.

- (5) An order under—
- (a) paragraph (i), (l) or (n) of subsection (1),
 - (b) subsection (13)(a) of section 21,
 - (c) subsection (3) of section 23,
 - (d) subsection (10) of section 31,
 - (e) subsection (10) of section 35,
 - (f) subsection (12) of section 64,
 - (g) section 67,
 - (h) subsection (9) of section 78,
 - (i) paragraph (b) of section 90(1),
 - (j) subsection (2) of section 91 (being an order made by virtue of subsection (3) of that section),
 - (k) subsection (4) or (6) of section 92, or
 - (l) paragraph 18 of schedule 6,

is not made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Parliament.

- (6) In subsection (1)(q), “ARTL system” has the same meaning as in section 77(1) and (2).

NOTE

Section 95 is the rule-making power. It is longer than the equivalent provision in the 1979 Act (section 27) because many specific powers are set forth. Rules are made by the Scottish Ministers, who must first consult the Keeper. That is a change from section 27 of the 1979 Act which provides that the person to be consulted is the Lord President of the Court of Session.

Subsection (3) allows the Scottish Ministers to "sub-delegate" certain minor rule-making powers to the Keeper.

Subsections (4) and (5) set out when the affirmative procedure is to be adopted, and when the negative procedure is to be adopted.

96 Re-enactment of sections of the Land Registration (Scotland) Act 1979

Schedule 7, the provisions of which are derived from sections 16 and 20 to 22A of the Land Registration (Scotland) Act 1979 (c.33), has effect.

NOTE

Section 16 of the 1979 Act authorises the omission of certain clauses from deeds. Sections 20 to 22A of the 1979 Act are provisions that have nothing to do with land registration. Since it would be undesirable to leave any part of the 1979 Act in force, especially if the only remaining provisions in it were not about the subject of the statute's title, these provisions are re-enacted in schedule 7.

97 Minor and consequential amendments

Schedule 8, which contains minor amendments and amendments consequential upon the provisions of this Act, has effect.

NOTE

Schedule 8 contains minor and consequential amendments to earlier legislation. The explanatory notes to that schedule provide further information.

98 Repeals

- (1) The enactments mentioned in schedule 9 are repealed to the extent mentioned in the second column of that schedule.
- (2) Subsection (1) is subject to paragraph 16 of schedule 4.

NOTE

Section 98 introduces schedule 9, which is a schedule of repeals. The repeals include three whole Acts, namely the Burgh Registers (Scotland) Act 1926, the 1979 Act, and the Land Registers (Scotland) Act 1995.

99 Crown application

- (1) This Act binds the Crown.
- (2) And accordingly it applies to land—
 - (a) belonging to Her Majesty, whether in right of the Crown or of Her private estates,

- (b) belonging to the Prince and Steward of Scotland,
 - (c) belonging to an office-holder in the Scottish Administration or to a government department, or
 - (d) held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,
- in the same way as it applies to other land.

NOTE

Section 99 provides that the Act binds the Crown. In substance it re-enacts section 26 of the 1979 Act.

100 Short title and commencement

- (1) This Act may be cited as the Land Registration (Scotland) Act 2010.
- (2) This Act, except this section, comes into force on such day as the Scottish Ministers may by order appoint; and different days may be so appointed for different provisions and for different purposes.

NOTE

Section 100 is the standard provision about short title and commencement.

SCHEDULE 1

(introduced by section 16(11))

AREAS OF LAND TENANTED IN COMMON

- 1 If the Keeper thinks fit, the title sheet of an area of land tenanted in common by the tenants of two or more other areas of land (and by no-one else) may be constituted as a “shared leased area title sheet”.
- 2 In the following provisions of this schedule, references to a “shared leased area” are to an area of land the title sheet of which is so constituted; and references to the “sharing leases” are to the leases of the other areas tenanted by the tenants of the shared leased area.
- 3 There is to be included in the tenancy section of the title sheet of each of the sharing leases the shared leased area title number; and the shared leased area title sheet is to differ as follows from lease title sheets generally—
 - (a) no entry is to be made by virtue of paragraph (b) of section 6(5) in the shared leased area title sheet,
 - (b) there is to be entered in the tenancy section of the shared leased area title sheet, instead of the information required by paragraph (a) of section 8(1) (as read with section 92(5)), the sharing lease title numbers,
 - (c) there is to be entered—
 - (i) in the securities section of the shared leased area title sheet, a statement to the effect that the shared leased area may be subject to a heritable security registered against a sharing lease, and
 - (ii) in the burdens section of that title sheet, a statement to the effect that the shared leased area may be subject to some other encumbrance so registered, and
 - (d) no entry is to be made under section 9(1) in the securities section of the shared leased area title sheet.
- 4 Where a title sheet is constituted as a shared leased area title sheet—
 - (a) an entry under section 8(1)(b) (as read with section 92(5)) is to be made in the tenancy section of the shared leased area title sheet, and
 - (b) the quantum of the share which the tenant of a sharing lease has in the shared leased area is to be entered in the tenancy section of the title sheet of that sharing lease.
- 5 If the Keeper thinks fit and provided that the condition mentioned in paragraph 6 is satisfied, there may be omitted from the burdens section of the shared leased area title sheet any entry which would otherwise be required under section 10(1) (as read with section 92(5)).
- 6 The condition is that the encumbrance to which the entry would relate is (or falls to be) registered against each of the sharing leases.
- 7 A shared leased area title sheet may be converted at any time by the Keeper into an ordinary lease title sheet.
- 8 Where any such conversion takes place, the Keeper is to make such changes to the title sheets of the sharing leases as are consequential upon the conversion.

- 9 Unless the context otherwise requires, any reference in a document to a sharing lease is to be taken to include a reference to the share in the shared leased area which attaches to the sharing lease.
- 10 Registration has the same effect in relation to the share in a shared leased area which attaches to a sharing lease as it has in relation to the sharing lease (except in so far as may otherwise be provided in the deed registered).

NOTE

This schedule is introduced by section 16(11). Section 16 applies to shared areas that are owned in common such as lawns, paths, play areas and parking areas in a housing development. The section allows the Keeper to make up a title sheet for the shared area as a shared plot title sheet. Schedule 1 makes equivalent provision for shared areas that are tenanted rather than owned in common. See paragraph 6.10 of the Report, and recommendation 27. As the two sets of provisions are essentially the same, the commentary in the note to section 16 equally applies to schedule 1.

SCHEDULE 2
(introduced by section 31(1))

FORM OF ASCERTAINMENT DEED

I, A.B. (*designation*), proprietor of the subjects registered in the Land Register of Scotland under title number.....("the parent title"), considering that a provisional shared plot title sheet has been created in relation to those subjects under title number..... and further considering that I wish now to ascertain the common parts, do hereby declare the common parts to be (*the deed should adopt only one of the following*) [the whole subjects now remaining in the parent title][the whole subjects now remaining in the parent title under exception of the subjects delineated and coloured yellow (*or as the case may be*) on the plan annexed and signed as relative hereto][the subjects delineated and coloured yellow (*or as the case may be*) on the plan annexed and signed as relative hereto]

(Where the deed is also to quantify the share of ownership allocated to a sharing plot, add either:)

[And the share of ownership in the common parts which is hereby allocated to each of the sharing plots is an equal share.] (*or*)

[And the share of ownership in the common parts which is hereby allocated to each of the sharing plots is as specified in the schedule annexed and signed as relative to this deed.]

In Witness Whereof.....

NOTE

This is the statutory form of deed, known as an ascertainment deed, referred to in section 31(1) of the draft Bill. See the commentary in the note to section 31.

SCHEDULE 3
(introduced by section 38)

EXAMPLES TO ILLUSTRATE THE WORKING OF SECTIONS 35 AND 36

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. Ownership of the property passes from Z to Y 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. Ownership of the property passes from Y to Z 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 servitude becomes void on 15th May and the Keeper removes it 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 standard security becomes void on 15th May and the Keeper removes it 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.

NOTE

These are the examples referred to in section 38 of the draft Bill. They are designed to show how the system of advance notices will operate in some typical but also some less typical situations. See generally Part 14 of the Report.

SCHEDULE 4
(introduced by section 83(1))

AMENDMENT OF REGISTRATION OF LEASES (SCOTLAND) ACT 1857

- 1 The Registration of Leases (Scotland) Act 1857 (c.26) is amended as follows.

- 2 In section 1 (long leases, and assignations thereof, registrable in register of sasines)—
- (a) after the words “lawful to”, there is inserted “register in the Land Register of Scotland or as the case may be”,
 - (b) for the words from “record respectively” to “thereof” there is substituted “register or record assignations and translations of such leases”,
 - (c) the existing provisions as so amended become subsection (1), and
 - (d) after that subsection there is added—
“(2) In subsection (1) above, the expression “lands and heritages in Scotland” is, without prejudice to its generality, to be construed as including the seabed of the territorial sea of the United Kingdom adjacent to Scotland.”.
- 3 The title of section 1 as amended by paragraph 2 becomes “Long leases, and assignations thereof, registrable in Land Register of Scotland or register of sasines”.
- 4 In section 2 (recorded leases effectual against singular successors in the lands let)—
- (a) after the word “duly” there is inserted “registered or”, and
 - (b) in the proviso, after the words “purposes of” there is inserted “, and subject to section 20C of,”.
- 5 The title of section 2 as so amended becomes “Registered and recorded leases effectual against singular successors in the lands let”.
- 6 In section 3 (assignations of recorded leases)—
- (a) in subsection (1), after—
 - (i) the word “been”, where it first occurs, there is inserted “registered or”,
 - (ii) the words “right is” there is inserted “registered or”,
 - (iii) the word “Schedule” there is inserted “(ZA.) or, as the case may be,”, and
 - (iv) the words “and the” there is inserted “registering or”,
 - (b) in subsection (2), for the words from “recording of” to the end there is substituted “registration under the Land Registration (Scotland) Act 1979 (c.33) of the assignee’s interest or the registration of such assignation under the Land Registration (Scotland) Act 2010 (asp 00) or the recording of such assignation, shall be as effectual against any singular successor of the assignee in the subjects assigned as if such assignee had been a grantee of the lease and, as the case may be, the grantee’s interest or the lease had been so registered or the lease had been duly recorded.”, and
 - (c) in subsection (2C), the words “, notwithstanding section 3(4) of the Land Registration (Scotland) Act 1979 (c.33) (creation of real right or obligation on date of registration etc.),” and “of an interest in land under” are repealed.
- 7 The title of section 3 as so amended becomes “Assignations of registered or recorded leases”.
- 8 In section 10 (adjudgers to complete right by recording abbreviate)—
- (a) after the words “such lease” there is inserted “registered or recorded”,
 - (b) before the word “recording” there is inserted “registering or”, and
 - (c) after the words “lease is” there is inserted “registered or”.

- 9 In section 12 (preferences regulated by date of recording transfer)—
- (a) after the words “all assignments” there is inserted “of any such lease registered or recorded as aforesaid”,
 - (b) after the words “of such leases” there is inserted “registered or”, and
 - (c) after the words “dates of” there is inserted “registering or”.
- 10 The title of section 12 as so amended becomes “Preferences regulated by date of registering or recording transfer”.
- 11 In section 13 (renunciations and discharges to be recorded) after the words—
- (a) “lease as aforesaid” there is inserted “registered or”,
 - (b) for the word “(G.)” there is substituted “(ZG.) (or (G.))”, and
 - (c) after the word “duly” there is inserted “register or”.
- 12 The title of section 13 as so amended becomes “Renunciations and discharges to be registered or recorded”.
- 13 In section 14 (entry of decree of reduction), after the word—
- (a) “renunciation” there is inserted “registered or as the case may be”, and
 - (b) “duly” there is inserted “register or”.
- 14 In section 15 (mode of registering etc.)—
- (a) the existing provisions become subsection (1), and
 - (b) after that subsection there is added—
 - “(2) References in subsection (1) above to registration are not to be construed as including references to registration in the Land Register of Scotland.”.
- 15 In section 16 (registration equivalent to possession”, after subsection (2) there is added—
- “(3) References in subsections (1) and (2) above to registration are not to be construed as including references to registration in the Land Register of Scotland.”.
- 16 After section 20 there is inserted—

“20A Certain transactions or events registrable in the Land Register of Scotland

- (1) A transaction or event which, though not a transaction or event creating or affecting an overriding interest, is under any enactment or rule of law capable (whether by itself or in conjunction with registration) of affecting the title to a lease entered in the Land Register of Scotland is registrable in that register.
- (2) In subsection (1) above and in section 20B(1)(a)(ii) of this Act, the expression “overriding interest” has the meaning given by subsection (3) below.”.

And the definition of “overriding interest” in section 28(1) of the Land Registration (Scotland) Act 1979 (c.33), with the modifications mentioned in paragraph (a), is, on the repeal of that Act, saved but transferred into section 20A to become subsection (3) of that section.

- 17 The modifications are that—
- (a) the words “, subject to sections 6(4) and 9(4) of this Act,”are omitted,

- (b) for the words “title sheet of the interest in land under section 6(1)(e) of this Act” there is substituted “relevant title sheet”, and
- (c) for the words “its title sheet under section 6(1) of this Act” there is substituted “the relevant title sheet”.

18 After section 20A (as inserted by paragraph 16) there is inserted—

“20B Effect of registration in the Land Register of Scotland

- (1) Registration in the Land Register of Scotland shall have the effect of—
 - (a) vesting in the person registered as entitled to the lease a real right in and to the lease and in and to any right or pertinent, express or implied, forming part of the lease, subject only to—
 - (i) the effect of any matter entered in that register so far as adverse to the entitlement, and
 - (ii) any overriding interest,
 - (b) making any registered right or obligation relating to the registered lease a real right or obligation, and
 - (c) affecting any registered real right or obligation relating to the registered lease,
insofar as the right or obligation is capable, under any enactment or rule of law, of being vested as a real right, of being made real or (as the case may be) of being affected as a real right.
- (2) Registration in the Land Register of Scotland shall be the only means—
 - (a) whereby rights or obligations relating to a registered lease become real rights or obligations, or
 - (b) of affecting such real rights or obligations.
- (3) Subject to Part 6 of the Land Registration (Scotland) Act 2010 (asp 00) (realignment of rights to conform with title sheet record), registration of an invalid deed shall confer no real effect.

20C Disapplication of Leases Act 1449

The Leases Act 1449 (c.6) shall not apply to a lease registrable under this Act and granted on or after the date on which —

- (a) the land to which the lease relates, or any part of that land, became land within an operational area (that is to say within an area in respect of which the provisions of the Land Registration (Scotland) Act 1979 (c.33) had come into operation), or
- (b) section 83 of the Land Registration (Scotland) Act 2010 (asp00) (amendment of Registration of Leases (Scotland) Act 1857 (c.26)) comes into force.

20D Long fishing leases

This Act applies to a contract within the meaning of section 66 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (asp 15) (application of Leases Act 1449) as it does to a lease described in section 1 of this Act provided that the contract in question—

- (a) is for a period exceeding twenty years, or
- (b) includes an obligation such as is described in section 17 of this Act.

20E The expression “the register”

Except where the context otherwise requires, in this Act—

- (a) the expression “the register” is to be construed as including a reference to the Land Register of Scotland, and
- (b) analogous expressions are to be construed accordingly.

20F Disapplication of certain provisions as to interpretation

Subsection (1) of section 94 of the Land Registration (Scotland) Act 2010 (asp 00) (interpretation of certain references) does not apply to the provisions of this Act.”.

19 Before Schedule (A.) there is inserted—

“SCHEDULE (ZA.)

FORM OF ASSIGNATION OF LEASE REGISTERED IN THE LAND REGISTER OF SCOTLAND

I, *A.B.*, [*designation*] in consideration of the sum now paid to me, [*or otherwise, as the case may be,*] assign to *C.D.* [*designation*] a lease registered in the Land Register of Scotland under title number [*number*] [*but (where the lease is assigned in part only) in so far only as regards the following portion of the subjects leased; viz. (specify particularly the portion),*] with entry as at (*term of entry*). And [*where sub-lease*] I assign the rents from [*term*]; and I grant warrandice; and I bind myself to free and relieve the said *C.D.* of all rents and burdens due to the landlord or others at and prior to the term of entry in respect of said lease; and I consent to registration for preservation and execution.

[*Testing clause.*†]

†Note.—In the case of a traditional document, subscription of it by the granter will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document).”.

20 In each of Schedules (A.) (form of assignation of lease), (G.) (renunciation of lease) and (H.) (form of discharge of bond and assignation in security), in the note relating to subscription of the document in question—

- (a) for the words “Subscription of the document by the granter of it” there is substituted “In the case of a traditional document, subscription of it by the granter”, and
 - (b) for the words “(see the Requirements of Writing (Scotland) Act 1995 (c.7))” there is substituted “: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)”.
- 21 The title of Schedule (A.) becomes “Form of assignation of lease recorded in register of sasines”.
- 22 Schedule (B.) (form of bond and assignation in security) and the note to that schedule are repealed.
- 23 Schedule (D.) (form of translation of assignation in security) and the note to that schedule are repealed.
- 24 Before Schedule (G.) there is inserted—

“SCHEDULE (ZG)

RENUNCIATION OF LEASE REGISTERED IN THE LAND REGISTER OF SCOTLAND

I, *A.B.* [*designation*] renounce as from the term of [*term*] in favour of *C.D.* [*or as the case may be*] a lease granted by the said *C.D.* [*or as the case may be*] and registered in the Land Register of Scotland under title number [*number*].

[*Testing clause.*†]

†Note.—In the case of a traditional document, subscription of it by the granter will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document).”.

- 25 The title of Schedule (G.) becomes “Renunciation of lease recorded in the register of sasines”.

NOTE

For discussion of leases in the land registration system, see Part 9 of the Report. The changes made by this schedule to the Registration of Leases (Scotland) Act 1857 reflect the policy that questions as to which leases are registrable and which are not, the effect of registration and of non-registration, which types of alteration are registrable, and the effect of the registration or non-registration of alterations, should all be regulated by the legislation on leases and not by the land registration statute. The 1857 Act is therefore amended in two main respects. First, it is made clear which provisions of the 1857 Act apply to the Land Register and which do not. This is done by amending the references to the Register of Sasines to include where appropriate references to the Land Register. Second, the substantive consequences of registration and non-registration in the Land Register are set out. This involves transferring certain provisions from the 1979 Act into the 1857 Act. The changes implement recommendation 38(a) and (b). See paragraphs 9.12 to 9.14 and also paragraphs 38.7 and 38.8 of the Report. Whilst the amendments to the 1857 Act are extensive, the amount of substantive change to the law is slight. The Report recognises that the 1857 Act stands in need of a modern review.

Paragraph 2 amends section 1 by inserting a reference to the Land Register. A reference to assignments in security is removed, such assignments having become obsolete as a result of the Conveyancing and Feudal Reform (Scotland) Act 1970. A new subsection (2) is added making clear that the reference to land etc in

section 1 includes the seabed of the territorial sea. Paragraph 3 consequentially amends the title of section 1. No further reference is made in this note to paragraphs that simply change the title of particular sections or schedules.

Paragraph 4 amends section 2 by inserting a reference to the Land Register. It also inserts into the proviso a reference to new section 20C of the 1857 Act the effect of which is that the only way for a long lease to acquire real effect is through registration in the Land Register. In other words, the Leases Act 1449 is disapplied to such leases. (This does not change the substance of the existing law.) See paragraphs 9.7 to 9.9 of the Report.

Paragraph 6 amends section 3 by inserting references to the Land Register and providing for a form of assignation for leases registered in the Land Register in schedule (ZA). (Schedule (ZA) is introduced by paragraph 19.) Paragraph 6 also removes a now-obsolete reference to the 1979 Act.

Paragraphs 8, 9, 11, and 13 amend the sections referred to by inserting references to the Land Register. The amendments to section 13 also provide for a form of renunciation for leases registered in the Land Register (schedule (ZG)). (Schedule (ZG) is introduced by paragraph 24.)

Paragraphs 14 and 15 amend sections 15 and 16 to make clear that they do not apply to the Land Register as was the case also under the 1979 Act.

Paragraphs 16 to 18 insert new sections 20A to 20C into the 1857 Act. The new sections essentially re-enact certain provisions of the 1979 Act setting out what alterations may be registered and the substantive consequences of registration and non-registration in the Land Register. They also implement recommendation 38(b) together with recommendation 39. See paragraphs 9.12 to 9.14 of the Report. For an analysis of the existing law relating to alterations and the uncertainties and issues of scope leading to the decision to re-enact the 1979 Act provisions in relation to alterations, see paragraphs 9.15 to 9.30 of the Report.

New section 20A re-enacts section 2(4)(c) of the 1979 Act. This involves retention of the concept of "overriding interest" and so the definition of that term in section 28(1) is preserved and transferred with appropriate modifications into section 20A.

New section 20B(1) re-enacts section 3(1) of the 1979 Act which sets out the effect of registration of a lease and an alteration to a lease. Subsection (3) makes clear that registration no longer brings the benefits of the Keeper's "Midas touch" except in cases where the re-alignment principle applies. (For the Keeper's Midas touch see Part 13 of the Report. For the realignment principle as applied to leases see paragraphs 23.24 to 23.31 of the Report.)

New subsection 20B(2) re-enacts the second part of section 3(3) of the 1979 Act which on one view requires alterations to be registered if they are to acquire real effect.

New section 20C disapplies the Leases Act 1449 to registrable long leases, thus continuing the effect of (the first part of) of section 3(3) of the 1979 Act, namely that registration is the only way for a long lease to acquire real effect. See paragraphs 9.7 to 9.9 of the Report.

Paragraph 18 also inserts new sections 20D, 20E and 20F into the 1857 Act.

Section 20D applies the 1857 Act to long leases of freshwater fishings and by so doing makes clear that such long leases can be registered and must be so registered to acquire real effect. The section implements recommendation 43. See paragraphs 9.45 to 9.47 of the Report.

Section 20E is a translation provision whereby references to the register are to be read as including references to the Land Register. Section 20F disapplies the general translation provision in section 94. Section 94 is not relevant because of the changes to the 1857 Act itself.

Paragraph 20 amends the notes referred to about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the Bill.

Paragraphs 22 and 23 repeal schedules that are now obsolete.

SCHEDULE 5
(introduced by section 83(2))

AMENDMENT OF REQUIREMENTS OF WRITING (SCOTLAND) ACT 1995

- 1 The Requirements of Writing (Scotland) Act 1995 (c.7) is amended as follows.
- 2 In section 1 (writing required for certain contracts, obligations, trusts, conveyances and wills)—
- (a) in subsection (1), for the words “subsection (2)” there is substituted “subsections (2C) and (2D)”, and
 - (b) for subsections (2) to (6) there is substituted—
 - “(2C) A written document which is either a traditional document complying with section 2, or an electronic document complying with section 9B, of this Act shall be required for—
 - (a) the constitution of a contract or unilateral obligation for the creation, transfer, variation or extinction of a real right in land,
 - (b) the creation, transfer, variation or extinction of a real right in land otherwise than by the operation of a court decree, enactment or rule of law, or
 - (c) the constitution of an agreement under section 14(2) of the Land Registration (Scotland) Act 2010.
 - (2D) A written document which is a traditional document complying with section 2 of this Act shall be required for—
 - (a) the making of a—
 - (i) will,
 - (ii) testamentary trust disposition and settlement, or
 - (iii) codicil,(but a written document complying either with section 2 or 9B of this Act shall suffice to constitute a special destination), or
 - (b) the constitution of a—
 - (i) gratuitous unilateral obligation other than an obligation undertaken in the course of business, or
 - (ii) trust whereby a person declares himself to be sole trustee of his own property or of any property which he may acquire,(but, where the making of such an obligation or trust is within and ancillary to a transaction relating to land, a written document complying either with section 2 or 9B of this Act shall suffice to constitute the obligation or trust).”.

3 The provisions of section 1 as so amended become Part 1 of the Act.

4 The title of Part 1 is “When writing is required”.

5 After section 1 there is inserted—

“1A Application of Part 2

This Part of this Act applies to documents written on paper, parchment or some similar tangible surface (any such document being in this Act referred to as a “traditional document”).”.

6 In section 2 (type of writing required for formal validity of certain documents)—

(a) in subsection (1)—

(i) after the word “No” there is inserted “traditional”, and

(ii) for the words “section 1(2)” there is substituted “subsection (2C) or (2D) of section 1, and

(b) subsection (2) is repealed.

7 The title of section 2 as so amended becomes “Type of writing required for formal validity of certain traditional documents”.

8 Sections 2A (formalities of execution of electronic documents), 2B (directions by the Keeper of the Registers of Scotland) and 2C (authentication of an electronic document by a person granting in more than one capacity) are repealed.

9 In section 3 (presumption as to granter’s subscription or date or place of subscription)—

(a) in subsection (1)(a), before the word “document” there is inserted “traditional”,

(b) in subsection (2), for the words “testamentary document consists” there is substituted “traditional document is a testamentary document consisting”,

(c) in subsection (3)(a), before the word “document” there is inserted “traditional”,

(d) in subsection (4), after the words “relating to a” there is inserted “traditional”,

(e) in subsection (9), after the word “any” there is inserted “traditional”, and

(f) in subsection (10)(a), for the words “testamentary document bears” there is substituted “traditional document is a testamentary document bearing”.

10 Sections 3A (presumption as to the authentication of electronic documents) and 4 (presumption as to granter’s subscription or date or place of subscription when established in court proceedings) are repealed.

11 In section 5 (alterations to documents: formal validity and presumptions)—

(a) in subsection (1)—

(i) after the words “made to a” there is inserted “traditional”, and

(ii) for the words “section 1(2)” there is substituted “subsection (2C) or (2D) of section 1”,

(b) in subsection (3), after the words “to a” there is inserted “traditional”,

(c) in subsection (4), after the words “Where a” there is inserted “traditional”,

(d) for subsection (7) there is substituted—

“(7A) On an application under subsection (6) above evidence shall, unless the court otherwise directs, be given by affidavit.

- (7B) An application under subsection (6) above may be made either as a summary application or as incidental to, and in the course of, other proceedings.
- (7C) In subsection (6), “the court” means—
 - (a) in the case of a summary application—
 - (i) the sheriff in whose sheriffdom the applicant resides, or
 - (ii) if the applicant does not reside in Edinburgh, the sheriff at Edinburgh, or
 - (b) in the case of an application made in the course of other proceedings, the court before which those proceedings are pending.”,
 - (e) in subsection (8), after the words “to a” there is inserted “traditional”, and
 - (f) subsection (9) is repealed.
- 12 The title of section 5 as so amended becomes “Alterations to traditional documents: formal validity and presumptions”.
- 13 Sections 6 (registration of documents) and 6A (registration for preservation and execution of electronic standard securities) are repealed.
- 14 In section 7 (subscription and signing)—
 - (a) in subsection (1), before the word “document”, where it first occurs, there is inserted “traditional”,
 - (b) in subsection (2)—
 - (i) before the word “document”, where it first occurs, there is inserted “traditional”, and
 - (ii) after the words “alteration to a” there is inserted “traditional”,
 - (c) in subsection (4), after the words “grants a” there is inserted “traditional”, and
 - (d) in subsection (5)—
 - (i) before the word “document”, where it first occurs, there is inserted “traditional”, and
 - (ii) after the words “alteration to a” there is inserted “traditional”.
- 15 In section 8 (annexations to documents)—
 - (a) in subsection (1), after the words “to a” there is inserted “traditional”,
 - (b) in subsection (2), after the words “Where a” there is inserted “traditional”,
 - (c) in subsection (4), at the end there is added “to a traditional document”, and
 - (d) in subsection (5), after the words “to a” there is inserted “traditional”.
- 16 The title of section 8 as so amended becomes “Annexations to traditional documents”.
- 17 In section 9 (subscription on behalf of blind granter or granter unable to write)—
 - (a) in subsection (1), after the words “of a” there is inserted “traditional”, and
 - (b) in subsection (5)(b), after the words “made to a document” there is inserted “as mentioned in section 5(1)”.
- 18 The provisions of sections 1A to 9 as so inserted, or as the case may be amended, become Part 2 of the Act.

19 The title of Part 2 is “Traditional documents”.

20 After section 9 there is inserted—

“PART 3

ELECTRONIC DOCUMENTS

9A Application of Part 3

This Part of this Act applies to documents which, rather than being written on paper, parchment or some similar tangible surface are created in electronic form (any document so created being in this Act referred to as an “electronic document”).

9B Validity of electronic document

- (1) No electronic document required by section 1(2C) of this Act shall be valid in respect of the formalities of execution unless—
 - (a) it is authenticated by the granter, or if there is more than one granter by each granter, in accordance with subsection (2) below, and
 - (b) it meets such other requirements (if any) as may be prescribed by the Scottish Ministers in regulations made by statutory instrument.
- (2) An electronic document is authenticated by a person if the electronic signature of that person—
 - (a) is incorporated into, or logically associated with, the electronic document,
 - (b) was created by the person by whom it purports to have been created, and
 - (c) is of such type, and satisfies such requirements (if any), as may be prescribed by the Scottish Ministers in regulations made by statutory instrument.
- (3) Where a person grants an electronic document in more than one capacity, authentication by him of the document, in accordance with subsection (2) above, shall be sufficient to bind him in all such capacities.
- (4) A statutory instrument containing regulations under subsection (1)(b) or (2)(c) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.

9C Presumption as to authentication of electronic document

- (1) Where—
 - (a) an electronic document bears to have been authenticated by the granter,
 - (b) nothing in the document or in the authentication indicates that it was not so authenticated, and
 - (c) the conditions set out in subsection (2) below are satisfied,the document shall be presumed to have been authenticated by the granter.

- (2) The conditions are that the electronic signature incorporated into, or logically associated with, the document—
 - (a) is of such type and satisfies such requirements as may be prescribed by the Scottish Ministers in regulations made by statutory instrument, and
 - (b) (either or both)—
 - (i) bears to be certified,
 - (ii) is of such type, satisfies such requirements and is used in such circumstances as may be so prescribed;

and that if the electronic signature bears to be certified (and does not conform with paragraph (b)(ii) above) the certification is of such type and satisfies such requirements as may be so prescribed
- (3) A statutory instrument containing regulations under subsection (2)(a) or (b) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.

9D Further provision by Scottish Ministers as respects electronic documents

- (1) The Scottish Ministers, in regulations made by statutory instrument, may make provision as to the effectiveness or formal validity of, or presumptions to be made with regard to—
 - (a) any alteration made, whether before or after authentication, to an electronic document,
 - (b) the authentication, by or on behalf of the granter, of such a document,
 - (c) the authentication, by or on behalf of a person with a physical disability, of such a document, or
 - (d) any annexation to such a document,

(including, without prejudice to the generality of this subsection, presumptions to be made with regard to the time and place of authentication of such a document).
- (2) The Scottish Ministers may, in regulations under subsection (1) above, make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of the regulations.
- (3) A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of the Scottish Parliament except that such an instrument may, by virtue of subsection (2) above, amend or repeal any enactment (including any provision of this Act) and where it does shall not be made unless a draft of the instrument has been—
 - (a) laid before, and
 - (b) approved by a resolution of,

the Scottish Parliament.

9E Delivery of electronic document

An electronic document may be delivered electronically or by such other means as are reasonably practicable.”.

21 After section 10 there is inserted—

“10A Registration of document

- (1) Subject to subsection (6) below, it shall not be competent—
 - (a) to record a document in the Register of Sasines,
 - (b) to register a document for execution or preservation in the Books of Council and Session or in sheriff court books, or
 - (c) to register a document in the Land Register of Scotland,unless both subsection (2) and subsection (3) below apply in relation to the document.
- (2) This subsection applies where—
 - (a) the document is presumed under section 3, 9C or 10C or by virtue of section 9D(1) of this Act to have been subscribed, or as the case may be authenticated, by the granter, or
 - (b) if there is more than one granter, the document is presumed by virtue of any of those provisions to have been subscribed, or as the case may be authenticated, by at least one of the granters.
- (3) This subsection applies where—
 - (a) the document, being an electronic document,
 - (b) the electronic signature authenticating it, and
 - (c) if the document bears to be certified, the certification,are in such form and of such type as the Scottish Ministers may, in regulations made by statutory instrument after consultation with the Keeper of the Registers of Scotland and the Lord President of the Court of Session, prescribe.
- (4) A statutory instrument containing such regulations—
 - (a) may make different provision for different cases or classes of case, and
 - (b) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) Without prejudice to the generality of subsection (4)(a) above, provision made by virtue of that subsection may include provision to the effect that it shall not be competent to register an electronic document in sheriff court books even where both subsection (2) and subsection (3) above apply in relation to the document.

- (6) Subsection (1) above shall not apply in relation to—
- (a) a document’s—
 - (i) being recorded in the Register of Sasines, or
 - (ii) being registered in the Land Register of Scotland, in the Books of Council and Session or in sheriff court books,
 if an enactment requires or expressly permits such recording or registration notwithstanding that the document is not presumed to have been subscribed, or as the case may be authenticated, by the granter or by at least one of the granters,
 - (b) the recording of a court decree in the Register of Sasines or the registering of such a decree in the Land Register of Scotland,
 - (c) the registering in the Books of Council and Session or in sheriff court books of—
 - (i) a testamentary document,
 - (ii) a document registration of which is directed by the Court of Session or as the case may be by the sheriff,
 - (iii) a document the formal validity of which is governed by a law other than Scots law, provided that the Keeper of the Registers of Scotland or as the case may be the sheriff clerk is satisfied that the document is formally valid according to that other law,
 - (iv) a court decree granted under section 5 or 10C, or by virtue of section 9D(1), of this Act in relation to a document already registered in the Books of Council and Session or as the case may be in sheriff court books, or
 - (v) the registration of a court decree in a separate register maintained for that purpose.
- (7) A document may be registered for preservation in the Books of Council and Session or in sheriff court books without a clause of consent to registration.

10B Personal bar

- (1) Where a contract, obligation or trust mentioned in section 1(2C)(a) or 1(2D)(b) of this Act is not constituted in a document complying with section 2 or 9B of this Act, but one of the parties in the contract, a creditor in the obligation or a beneficiary under the trust (in this section referred to as “the first person”) has acted or refrained from acting in reliance on the contract, obligation or trust with the knowledge and acquiescence of the other party to the contract, the debtor in the obligation or the truster (in this section referred to as “the second person”)—
- (a) the second person shall not be entitled to withdraw from the contract, obligation or trust, and
 - (b) the contract, obligation or trust shall not be regarded as invalid,
- on the ground that it is not so constituted provided that the condition set out in subsection (2) below is satisfied.

- (2) The condition is, that the position of the first person—
 - (a) as a result of acting or refraining from acting as mentioned in subsection (1) above has been affected to a material extent, and
 - (b) as a result of such a withdrawal as is mentioned in that subsection would be adversely affected to a material extent.
- (3) In relation to the constitution of any contract, obligation or trust mentioned in section 1(2C)(a) or 1(2D)(b) of this Act, subsections (1) and (2) above replace the rules of law known as *rei interventus* and homologation.
- (4) This section shall apply to the variation of a contract, obligation or trust as it does to its constitution but as if, in subsections (1) and (2) above, for the references to acting or refraining from acting in reliance on, or to withdrawing from, the contract, obligation or trust there were substituted respectively references to acting or refraining from acting in reliance on, or to withdrawing from, the variation.

10C Presumptions as to granter’s subscription or authentication etc. when established in court proceedings

- (1) Where a document bears to have been subscribed or authenticated by a granter of it, but there is no presumption under section 3 or 9C of this Act that the document has been subscribed or authenticated by that granter, then, if the court, on an application being made to it by any person who has an interest in the document, is satisfied that the document was subscribed or authenticated by that granter it shall—
 - (a) in the case of a traditional document, cause the document to be endorsed with a certificate to that effect, or
 - (b) in the case—
 - (i) of a traditional document which already has been registered in the Books of Council and Session or in sheriff court books, or
 - (ii) of an electronic document,
 grant decree to that effect.
- (2) Where a document bears to have been subscribed or authenticated by a granter of it, but there is no presumption under section 3 or by virtue of section 9D(1) of this Act as to the date or place of subscription or authentication, then, if the court, on an application being made to it by any person who has an interest in the document, is satisfied as to that date or place it shall—
 - (a) in the case of a traditional document, cause the document to be endorsed with a certificate to that effect, or
 - (b) in the case—
 - (i) of a traditional document which already has been registered in the Books of Council and Session or in sheriff court books, or
 - (ii) of an electronic document,
 grant decree to that effect.
- (3) On an application under subsection (1) or (2) above, evidence shall, unless the court otherwise directs, be given by affidavit.

- (4) An application under subsection (1) or (2) above may be made either as a summary application or as incidental to, and in the course of, other proceedings.
- (5) The effect of a certificate or decree—
 - (a) under subsection (1) above, shall be to establish a presumption that the document has been subscribed or authenticated by the granter concerned, or
 - (b) under subsection (2) above, shall be to establish a presumption that the statement in the certificate or decree as to date or place is correct.
- (6) In this section, “the court” means—
 - (a) in the case of a summary application—
 - (i) the sheriff in whose sheriffdom the applicant resides, or
 - (ii) if the applicant does not reside in Scotland, the sheriff at Edinburgh, or
 - (b) in the case of an application made in the course of other proceedings, the court before which those proceedings are pending.

10D Contracts constituted or varied by several documents

A contract mentioned in section 1(2C)(a) of this Act may be regarded as constituted or varied (as the case may be) if the offer is contained in one or more documents and the acceptance is contained in another document or in other documents and if—

- (a) each of the documents which is a traditional document is subscribed by its granter or granters, and
- (b) each of the documents which is an electronic document is authenticated by its granter or granters.”.

22 Section 11 (abolition of proof by writ or oath, reference to oath and other common law rules) is repealed.

In section 12 (interpretation)—

(a) in subsection (1)—

(i) the definition of “ARTL System” is repealed,

(ii) after the definition of “authorised” there is inserted—

““certification”, in relation to an electronic signature incorporated into or logically associated with an electronic document, means confirming in a statement that—

(a) the electronic signature,

(b) a means of producing, communicating or verifying that signature, or

(c) a procedure applied to that signature,

is, either alone or combined with other factors, a valid means of establishing the authenticity of the electronic document, its integrity or both its authenticity and its integrity (it being immaterial, in construing this definition, whether the statement is made before or after the authentication of an electronic document to which the statement relates),”

(iii) the definition of “digital signature” is repealed,

(iv) in the definition of “document”, after the word “includes”, where it first occurs, there is inserted “, in the case of a traditional document,”

(v) for the definitions of “electronic communication” and “electronic document” there is substituted—

““electronic document” has the meaning given by section 9A,

“electronic signature” means so much of anything in electronic form as—

(a) is incorporated into, or logically associated with, an electronic document, and

(b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the electronic document, its integrity or both its authenticity and its integrity,” and

(vi) for the definitions of “signature-creation data” and “signature-creation device” there is substituted—

““traditional document” has the meaning given by section 1A,” and

(b) after subsection (3) there is added—

“(4) In relation to an electronic document—

(a) references to authenticity—

(i) are references to whether the document has been electronically signed by a particular person, and

(ii) may include references to whether the document is accurately timed or dated, and

- (b) references to integrity are references as to whether there has been any tampering with, or other modification of, the document.”.
- 24 The provisions of sections 10 to 15 as so inserted, or as the case may be amended, become Part 4 of the Act.
- 25 The title of Part 4 is “Provisions of general application”.
- 26 In Schedule 3 (modifications of the Act in relation to subscription or signing by relevant person under section 9 of the Act)—
- (a) in paragraph (a) of the subsection set out in paragraph 2 in substitution for section 3(1) of the Act, before the word “document” there is inserted “traditional”,
 - (b) in the subsection set out in paragraph 4 in substitution for section 3(4) of the Act, before the word “document”, where it first occurs, there is inserted “traditional”,
 - (c) in paragraph 7—
 - (i) for the words “4(1)” there is substituted “10C(1)”, and
 - (ii) in paragraph (a) of the subsection set out in substitution for what is, by virtue of sub-head (i), section 10C(1), before the word “document” there is inserted “traditional”, and
 - (d) in paragraph 8, for the words “4(5)(a)” there is substituted “10C(5)(a)”.
- 27 In paragraph 1 of Schedule 4 (minor and consequential amendments)—
- (a) in sub-paragraph (1), for the words “6(2)” there is substituted “10A(2)”, and
 - (b) in sub-paragraph (2), for the words “or subscribed” there is substituted “, subscribed or authenticated”.

NOTE

See generally Part 34 of the Report. This schedule amends the Requirements of Writing (Scotland) Act 1995 ("the 1995 Act") to permit contracts and deeds relating to land to be in electronic form. This will permit further development of electronic conveyancing in Scotland. (It also allows documents not relating to land to acquire "probative" status in an electronic form.) Paragraphs 34.1 to 34.12 of the Report give further information about the current position and policy drivers for permitting such development.

Although enacted as recently as 1995, the 1995 Act represents somewhat older policy and it is apparent both from its own terms and from the Commission's 1988 Report on Requirements of Writing that it contemplated only documents produced and authenticated by placing words onto a physical surface such as paper or parchment (in the modifications to the Act, and in these notes, such documents are called "traditional documents"). As a result, land contracts and land deeds could not take the form of electronic documents. A very limited set of exceptions was introduced by the Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 ("the ARTL Order"). The recommended amendments to the 1995 Act proceed on the basis that the genus of "written documents" will have two species: "traditional documents" and "electronic documents". The 1995 Act will be divided into four parts. Part 1 sets out when a document is required. Part 2 retains the current rules which are specific to traditional documents. Part 3 sets out new, but broadly equivalent rules specific to electronic documents. Part 4 contains provisions of general application relevant to both species. See paragraphs 34.25 to 34.27, 34.33 and 34.34 of the Report.

The changes made to the 1995 Act by the ARTL Order are undone, as they are superseded by the much more comprehensive e-enablement now effected. Certain technical standards currently set by "Keeper's Direction" would in future be set by statutory instrument under proposed new sections 9B(4) and 9C(3) of the Act. See paragraph 34.24 of the Report.

Paragraph 2 implements recommendation 131 (see paragraphs 34.31 and 34.32 of the Report) by amending section 1 of the 1995 Act. Subsection (1) is amended to provide that a written document is not required for the constitution of a contract, unilateral obligation or trust except as provided for in new subsections (2C) and (2D). New subsection (2C) provides that a formally valid written document (either traditional or electronic) is required for (i) the constitution of contracts and obligations for the creation, transfer, variation or extinction of real rights in land (e.g. missives); (ii) the creation, transfer, variation or extinction of such rights (i.e. for land deeds such as dispositions and standard securities); and (iii) alluvion agreements under section 14 of the draft Bill.

New subsection (2D) means that the reforms do not touch testamentary documents, which therefore must still take the form of traditional documents. But the words in brackets make clear that an electronic document such as a disposition can contain a special destination. Likewise, the reforms do not touch gratuitous unilateral obligations made other than in the course of business, or "truster-as-trustee" trusts. For these a traditional document remains necessary. But where such an obligation or trust is within and ancillary to a land transaction, it may be constituted by a formally valid electronic document. See paragraphs 34.17 and 34.28 to 34.30 of the Report.

New subsections (2C) and (2D) replace current subsection (2). Current subsections (2A) and (2B), which were inserted by the ARTL Order, are superseded and repealed. Current subsections (3) to (6) inclusive, which are concerned with "statutory personal bar", are removed from this part of the Act but are restated without substantive change in new section 10B.

Paragraphs 3 and 4 provide for section 1 as so amended to become Part 1 of the 1995 Act, which would be headed "When writing is required."

Paragraph 5 inserts a new section 1A into the 1995 Act to introduce those provisions which relate specifically to traditional documents and provides a definition of that term.

Paragraph 6 amends section 2 of the 1995 Act to make it clear that it relates only to traditional documents and consequentially to reflect the proposed replacement of current subsection (2) of section 1 by new subsections (2C) and (2D). Current section 2(2), which relates to contracts comprised of two or more documents, is repealed but replaced by new section 10D. Paragraph 7 amends the title of section 2 to refer explicitly to traditional documents.

Paragraph 8 repeals superseded sections 2A, 2B and 2C of the 1995 Act.

Paragraph 9 makes minor amendments to section 3 of the 1995 Act consequent to the adoption of the new expression "traditional document."

Paragraph 10 repeals superseded section 3A of the 1995 Act. Current section 4 is also repealed, but its substance is re-enacted in new section 10C, which applies to both traditional and electronic documents. Current subsections (3), (4) and (6) of section 4 are discussed in the next paragraph.

Paragraph 11 makes minor amendments to section 5 of the 1995 Act. The proposed replacement of current subsection (7) with new subsections (7A), (7B) and (7C) is consequential to the replacement of current section 4 by new section 10C and has the effect of carrying forward the norms currently contained in subsections (3), (4) and (6) of section 4 into section 5. Subsection (9), which was inserted by the ARTL Order, is superseded and repealed. Paragraph 12 amends the title of section 5 to refer explicitly to traditional documents.

Paragraph 13 repeals section 6 of the 1995 Act but new section 10A, which is discussed below, replaces it. Paragraph 13 also repeals, without replacement, section 6A of the 1995 Act. This provision was inserted 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 ARTL system, given that the Books of Council and Session were open only to traditional documents. Under new section 10A, 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.

Paragraphs 14 to 17 make minor textual amendments to sections 7, 8 and 9 of the 1995 Act consequent upon the division of the Act into Parts and the adoption of the term "traditional document."

Paragraphs 18 and 19 make sections 1A to 9 of the 1995 Act Part 2 of the Act entitled "traditional documents."

Paragraph 20 contains the main substantive changes to the 1995 Act. It inserts a new Part 3 into the Act comprised of new provisions specific to electronic documents. These are concerned with setting standards for (i) the formal validity, (ii) the probativity and (iii) the registrability of electronic documents. In contrast to the provisions about traditional documents, these new provisions make extensive use of delegating powers to ensure that the Act itself remains technologically neutral and future-proof. See paragraph 34.25 of the Report.

New section 9A introduces new Part 3 and the concept of electronic documents.

New section 9B sets out the conditions to be met for an electronic document to be valid in respect of the formalities of execution ("formally valid"). It implements recommendation 132. See paragraphs 34.35 to 34.41 of the Report.

New section 9C sets out the conditions to be met for an electronic document to be presumed to have been authenticated by a granter. This is the presumption often referred to as "probativity" or "self-proving status" which, in traditional documents, is achieved by the granter's signature being witnessed. This section implements recommendation 133. See paragraphs 34.42 to 34.50 of the Report.

New section 9D provides for secondary legislation to regulate the effectiveness, formal validity and presumptions applying to alterations to, and annexes to, electronic documents. See paragraph 34.54 of the Report. Subsections (2) and (3) provide that such secondary legislation may make incidental, supplemental, consequential, transitional, transitory or saving provision. Where such provision would amend or repeal an enactment, the regulations would be subject to affirmative resolution parliamentary procedure.

Section 9E implements recommendation 135 by providing, for avoidance of doubt, that an electronic document may be delivered electronically or by such other means as are reasonably practical. Such other means would include, for example, physical delivery of a DVD or USB memory stick containing the electronic document. See paragraphs 34.55 to 34.57 of the Report.

Paragraph 21 inserts new sections 10A, 10B, 10C and 10D.

Section 10A replaces current section 6 and implements recommendation 134. See paragraphs 34.51 to 34.53 of the Report. The section gives conditions for registration in the Land Register, the Register of Sasines, the Register of Deeds and Probative Writs in the Books of Council and Session, and the Sheriff Court Books. For both traditional and electronic documents, the default rule is that probative status is required. This replicates the existing rule for traditional documents in section 6. (The Land Register is not mentioned in current section 6(1), but in practice the Keeper requires documents submitted to this register to be probative.) For electronic documents only, a new condition is added that the electronic document itself, the authenticating electronic signature, and also any certification of that signature, must conform to requirements laid down by regulations. The purpose is to ensure that the Keeper and the Sheriff Clerks are not forced to be able to handle every conceivable format of electronic documents, signatures and certifications. Subsections (4) and (5) make clear that different requirements can be specified for different registers, and that it may be specified that electronic documents cannot be registered in the Sheriff Court Books, where in some cases the facility to receive and process electronic documents may not be available. Subsection (6) contains the exceptions to the default rule, which are modelled upon current section 6(3). Subsection (7) restates current section 6(4).

New section 10B restates the provisions concerning statutory personal bar currently contained in subsections (3) to (6) of section 1. The provisions now apply equally to traditional and electronic documents but are otherwise substantively unchanged.

New section 10C ("Presumptions as to grantor's subscription or authentication etc. when established in court proceedings") replaces current section 4. The new provision applies to both traditional and electronic documents and makes only one minor departure from the current terms of section 4. This is that whereas under the existing provision, the court on making a finding is normally to endorse a certificate to that effect on the document as opposed to granting decree to that effect, for electronic documents it is now provided that the court is always to grant decree given that it will not necessarily be possible for the court to add an endorsement to an electronic document.

New section 10D replaces existing section 2(2) which provides that where a contract is constituted by two or more documents (for example, missives) it is formally valid if each document is formally valid. The new provision extends the rule to electronic documents as well as to traditional documents and further allows formally valid contractual constitution or variation to be achieved by a mixture of traditional and electronic documents provided that each is formally valid.

Paragraph 22 repeals current section 11, which is spent. This repeal does not have the effect of resurrecting those rules as to proof by writ or oath which were abolished by the section.

Paragraph 23 makes amendments to section 12 of the 1995 Act, which is the interpretation section. Various definitions which had been inserted by the ARTL Order are superseded and repealed. Definitions of "certification" and "electronic signature" are added which follow those used in the Electronic Communications Act 2000. New subsection (4), explaining references to authenticity and integrity of electronic documents, also follows that Act.

Paragraphs 24 and 25 make sections 10 to 15 the new Part 4 of the 1995 Act entitled "Provisions of general application."

Paragraphs 26 and 27 make consequential amendments to schedules 3 and 4.

SCHEDULE 6 *(introduced by section 91(1))*

SAVINGS AND TRANSITIONAL PROVISIONS

Existing title sheets

- 1 On the designated day an existing title sheet becomes part of the title sheet record.
- 2 An existing title sheet which becomes, under paragraph 1, part of the title sheet record, may be amended by the Keeper so as—
 - (a) to conform with a requirement of, or imposed by virtue of, this Act, or
 - (b) to reflect something permitted by, or by virtue of, this Act.
- 3 An existing title sheet as respects an interest of ownership becomes under paragraph 1 a title sheet as respects a plot of land; and that plot is to be shown in the cadastral map with a cadastral unit number which is the number of the existing title sheet.
- 4 An existing title sheet as respects an interest of tenancy becomes under paragraph 1 a lease title sheet; and that lease is to be shown in the cadastral map with the title number of the existing title sheet.
- 5 An existing title sheet which becomes, by virtue of paragraph 4, a lease title sheet is to be amended by the Keeper, on or as soon as practicable after the designated day, so that the proprietorship section of the title sheet becomes its tenancy section.

- 6 An existing title sheet which becomes, under paragraph 1, part of the title sheet record is to be amended by the Keeper, on or as soon as practicable after the designated day, so that the charges section of the title sheet becomes its securities section.

Common areas

- 7 If, by reason of being owned in common, the selfsame area of land is, immediately before the designated day, included in two or more existing title sheets the Keeper may, if the Keeper thinks fit, depict that area in the cadastral map as a separate cadastral unit and create a title sheet for it.
- 8 Where a title sheet is created by virtue of paragraph 7, the Keeper is to make such changes to the other title sheets mentioned in that paragraph as are consequential upon its being so constituted.
- 9 If, by reason of being owned in common, the selfsame area of land (in this paragraph and in paragraph 11 referred to as “area A”) is, immediately before the designated day, included in two or more existing title sheets and on or after that day title sheets (in this paragraph and in paragraph 10 referred to as the “new title sheets”) are to be constituted for plots of land the proprietors of which will (*qua* proprietors of those plots) be comprised within those who own area A in common, area A may, by reason of being owned in common, be included in the new title sheets.
- 10 Where the respective shares of the proprietors were not entered in the existing title sheets they need not be entered in the new title sheets.
- 11 The Keeper may at any time create a separate title sheet for area A.

Conflict title sheets

- 12 If, other than by reason only of (either or both)—
(a) being owned in common,
(b) being comprised in a tenement,
the selfsame area of land is, immediately before the designated day, included in two or more existing title sheets it may continue to be so included during the period of 10 years which commences on the designated day; that is to say, the boundaries of the plots may, during that period, overlap.
- 13 But before the expiry of that period the Keeper is to amend the register to depict the area of land in which the plots overlap as a separate cadastral unit in the cadastral map; and the title sheet then created for that plot is to be (and to be known as) a “conflict title sheet”.
- 14 If, other than by reason only of the area of land to which an existing title sheet relates being owned in common, two or more persons are, immediately before the designated day, shown in the title sheet as entitled to the interest of ownership in that area of land, the title sheet, on becoming under paragraph 1 part of the title sheet record, is to be (and to be known as) a “conflict title sheet”.

- 15 Notwithstanding paragraphs 12 to 14, the register is inaccurate—
- (a) to the extent that, and
 - (b) for so long as,
- it discloses uncertainty as to ownership of an area of land mentioned in those paragraphs.
- 16 Conflict title sheets are to differ from the title sheets of plots of land generally in that there is to be entered in the proprietorship section of a conflict title sheet the name and designation of each of the persons who may be the proprietor, the uncertainty as to ownership being indicated; and if the Keeper thinks fit there may be entered in (either or both)—
- (a) the securities section,
 - (b) the burdens section,
- of a conflict title sheet an indication of the uncertainty as to ownership.
- 17 A competent application for registration is to be accepted by the Keeper if—
- (a) the deed on which it is based is granted by or is directed against a person as to whose ownership uncertainty is indicated, by virtue of paragraph 16, in the proprietorship section of a conflict title sheet, and
 - (b) the application would be so accepted were the person's title valid.
- 18 After consultation with the Keeper, the Scottish Ministers may, by order made by statutory instrument, amend paragraph 12 so as to provide for a different period of inclusion from that for the time being mentioned in that paragraph.

Pre-designated day title sheet

- 19 Until an entry is made, on or after the designated day, in the proprietorship section (or the tenancy section) of a title sheet which has become, under paragraph 1, part of the title sheet record, the Keeper's duty under paragraphs (b) and (c) of section 11(1) is to be disregarded in relation to that title sheet.
- 20 The Keeper's duty under section 70(1)(a) to issue an extract of, or of any part of, a title sheet as at a date before the designated day is to be construed as a duty to issue, in so far as the requisite material is held by the Keeper, an extract of, or of any part of, an existing title sheet maintained under Part 2 of the Land Registration (Scotland) Rules 1980 (SI 1980/1413) or Part 2 of the Land Registration (Scotland) Rules 2006 (SSI 2006/485).

Archive record

- 21 There is to be included in the archive record—
- (a) all copies of documents upon which the terms of the existing title sheets are founded,
 - (b) all copies of documents which relate to past states of title sheets and title plans, and
 - (c) such other information, in whatever form, as so relates,
- in so far as those copy documents, and as the case may be that other information, is held by the Keeper immediately before the designated day.
- 22 Paragraph (a) of section 12(4) may be disregarded if any title sheet made up by virtue of the application referred to in the paragraph was maintained under Part 2 of the Land Registration (Scotland) Rules 1980 (SI 1980/1413) or Part 2 of the Land Registration (Scotland) Rules 2006 (SSI 2006/485).
- 23 Paragraph (c) of that section may be disregarded if the title sheet in which the person was named, as mentioned in the paragraph, was so maintained.

Pending applications

- 24 Nothing in this Act, other than provision made by or by virtue of section 26, affects an application under section 4 of the 1979 Act (applications for registration) provided that the date of receipt of the application is before the designated day.
- 25 An application under section 9(1) of the 1979 Act (applications for rectification of the register) is of no effect if it has not been determined by the Keeper as at the designated day; and on or as soon as practicable after that day, the Keeper is to remove the record of that application from the register.

Claims under the 1979 Act

- 26 Where, immediately before the designated day, a person has an entitlement to claim indemnity under section 12(1) of the 1979 Act (indemnity in respect of loss) but either—
- (a) no such claim has been made, or
 - (b) any such claim as has been made is as yet undetermined,
- nothing in this Act affects the entitlement or claim.
- 27 Nothing in this Act affects any entitlement to reimbursement under subsection (1) of section 13 of the 1979 Act (reimbursement of certain expenditure) or any claim made by virtue of that subsection.

Bijural inaccuracies

- 28 If there is in the register, immediately before the designated day, an inaccuracy which the Keeper has power to rectify under section 9 of the 1979 Act (rectification of the register) then, as from that day—
- (a) any person whose rights in land would have been affected by such rectification has such rights (if any) in the land as that person would have if the power had been exercised, and
 - (b) the register is inaccurate in so far as it does not show those rights as so affected.
- 29 For the purpose of determining whether the Keeper has the power mentioned in paragraphs 28 and 33, the person registered as proprietor of the land is to be presumed to be in possession unless the contrary is shown.
- 30 Where, by virtue of paragraph 28—
- (a) a right is lost, compensation is payable under Part 5 as if warranty had been granted under section 39(1) in accepting an application by the person in whom the right was vested, or
 - (b) an encumbrance is revived, compensation is so payable as if such warranty had been granted in respect of an omission of the encumbrance.
- 31 Except that—
- (a) compensation is not so payable in so far as, had the Keeper rectified the inaccuracy before the designated day, either a right to indemnity under section 12 of the 1979 Act (indemnity in respect of loss) was excluded by virtue of subsection (2) of that section or there would, by virtue of subsection (3) of that section, have been no entitlement to such indemnity,
 - (b) any compensation so payable is to be reduced to the extent that, had the Keeper rectified the inaccuracy before the designated day, the amount of any indemnity would have been reduced by virtue of section 13(4) of that Act (reduction proportionate to the extent to which a claimant has contributed, by fraudulent or careless act or omission, to loss), and
 - (c) in construing Part 5 for the purposes of paragraph 30, paragraphs (b) and (c) of section 40 are to be disregarded.
- 32 Section 42(3) applies in relation to a payment made by virtue of paragraph 30(a) as that section applies in relation to any other payment under part 5.
- 33 If there is in the register, immediately before the designated day, an inaccuracy which the Keeper does not have power to rectify under section 9 of the 1979 Act, then on that day it ceases to be an inaccuracy.
- 34 Where, by virtue of paragraph 33, a person suffers loss which, had it been suffered by virtue of paragraph (b) of section 12(1) of the 1979 Act, would (after allowing for the effect of subsections (2) and (3) of that section) have given rise before the designated day to an entitlement under that section, the person is entitled to claim compensation, by virtue of this paragraph, from the Keeper in respect of that loss.
- 35 Sections 51(2) to (4) and 52 apply in respect of a claim by virtue of paragraph 34 as they apply in respect of a claim by virtue of section 51(1), but with the modification that, for paragraph (a) of section 52(1), there is substituted—
- “(a) is, in so far as it is not compensation mentioned in paragraph (b), to be quantified as at the date on which the register became inaccurate,”.

Depiction of tenement

- 36 Subsection (3) of section 15 is to be disregarded if any of the flats comprised in the tenement building mentioned in that subsection—
- (a) is recorded in the Register of Sasines, or
 - (b) is registered by virtue of an application accepted under section 4 of the 1979 Act.

Interpretation

- 37 In this schedule—
- “the 1979 Act” means the Land Registration (Scotland) Act 1979 (c.33), and
 - “the designated day” has the meaning given by section 89.

NOTE

This schedule, which is introduced by section 91, deals with the transition from registration under the 1979 Act to registration under the draft Bill. See Part 36 of the Report. Reference in this note to the designated day is to the day that the new scheme comes into force.

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 Keeper is, however, required to rename the C section (charges section) as the securities section and the B section (proprietorship section) of lease title sheets as the tenancy section. The paragraphs implement recommendation 143. See paragraphs 36.2 and 36.3 of the Report.

Paragraphs 7 to 11 contain provisions about common areas which 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 balance of the development. These paragraphs implement recommendation 144. See paragraph 36.4 of the Report.

Paragraphs 12 to 18 make provision about title sheets that presently conflict with each other, either (i) through the inclusion of the same piece of land, other than a common area, in more than one title sheet or (ii) through showing two or more persons, who are not owners in common, as owners of the land in question. Neither of these situations will be possible under the new scheme. Such title sheets are converted into "conflict title sheets" with the Keeper being required within ten years to identify all overlap cases falling within the first category, and to create each overlap area as a separate cadastral unit with its own title sheet. These paragraphs implement recommendation 145. See paragraph 36.5 of the Report.

Paragraphs 19 and 20 qualify the Keeper's duty in relation to the searchability of the Title Sheet Record and to issue extracts of pre-designated day title sheets. The qualifications take into account the data that has been kept relating to existing and prior title sheets and the way that it can presently be searched.

Paragraphs 21 to 23 provide for the transfer of copies of documents etc from the Keeper's present unofficial Archive Record to the new official Archive Record. They also qualify the Keeper's duty in relation to the searchability of the Archive Record so far as relating to title sheets that pre-date the new scheme.

Paragraph 24 makes clear that applications for registration that are pending at the designated day will be dealt with as applications under the 1979 Act. This paragraph implements recommendation 146. See paragraph 36.6 of the Report.

Paragraph 25 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. But that does not affect the applicant's rights as the Keeper is under a positive duty to rectify inaccuracies. See paragraph 36.7 of the Report.

Paragraph 26 makes 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. See paragraph 36.8 of the Report.

Paragraphs 28 to 35 deal with bijural inaccuracy. (For the concept of bijural inaccuracy, see Part 17 of the Report.) In the new scheme there will be no bijural inaccuracies so provision requires to be made for inaccuracies of that kind which 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.

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 28 to 32 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 33 to 35 make provision for the inaccuracy to cease to be an inaccuracy, ie 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.

In both cases, the practical result is very much 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 29 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.

Paragraphs 28 to 35 implement recommendation 147. See paragraphs 36.9 to 36.15 of the Report, and in particular the worked examples.

Paragraph 36 applies where the title to a flat in a tenement is already recorded in the 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 37 defines certain terms.

SCHEDULE 7 *(introduced by section 96)*

PROVISIONS DERIVED FROM SECTIONS 16 AND 20 TO 22A OF THE LAND REGISTRATION (SCOTLAND) ACT 1979

Omission of certain clauses in deeds

- 1 (1) It is not necessary to insert in any deed executed after the date of commencement of the Land Registration (Scotland) Act 1979 (c.33) (that date being, in this schedule, referred to as the “relevant date”) which conveys a right in land a clause of assignation of writs.

- (2) Any such deed, unless specially qualified, imports an assignation to the grantee (“Ge”) of the title deeds and searches and all deeds not duly registered or recorded and—
 - (a) imposes on the grantor (“Gr”) or any successor an obligation—
 - (i) to deliver to Ge all title deeds and searches relating to the right conveyed, and
 - (ii) to make forthcoming to Ge and Ge’s successors, at Ge’s or their expense, on all necessary occasions any title deeds and searches which remain in the possession of Gr or any successor and which relate partly to the right conveyed,
 - (b) imports an assignation to Ge by Gr of Gr’s right to require any person having custody of any title deeds and searches remaining undelivered to exhibit or deliver them, and
 - (c) imposes on Ge or any successor an obligation to produce on all necessary occasions, to any party having an interest in them, any deeds and searches which have been delivered to Ge but which relate partly to rights other than the right conveyed to Ge.
- (3) It is not necessary to insert in any deed conveying a right in land executed after the relevant date a clause of assignation of rents or a clause of obligation of relief.
- (4) Any such deed so executed, unless specially qualified, imports—
 - (a) an assignation of the rents payable in the case of—
 - (i) backhand rents, at the legal terms following the date of entry, and
 - (ii) forehand rents, at the conventional terms following that date, and
 - (b) an obligation on the grantor to relieve the grantee of all annuities and public, parochial and local burdens exigible in respect of the right prior to the date of entry.

Tenants-at-will

- 2 (1) A tenant-at-will is entitled, in accordance with this paragraph, to acquire the landlord’s right as such in the land which is subject to the tenancy-at-will (that land being, in this schedule, referred to as the “tenancy land”).
- (2) Subject to paragraph 3(2), if a tenant-at-will (“T”) wishes under this section to acquire that right T is to serve notice on the landlord (“L”), in or as nearly as may be in the form set out in the appendix to this schedule.
- (3) There is payable by T to L, by way of compensation in respect of the acquisition of tenancy land, such amount as may be agreed between them or, failing agreement, an amount equal to whichever is the lesser of—
 - (a) the value of the tenancy land, not including any buildings on that land but assuming that planning permission for residential purposes has been granted in respect of it,
 - (b) one twenty-fifth of the value of the tenancy land, including any buildings on that land,
 together with such further amount as is mentioned in sub-paragraph (4).

- (4) The further amount is—
- (a) such amount as may be required to discharge any heritable security over the tenancy land, or
 - (b) where the heritable security is granted over land including the tenancy land, such amount (being such proportion of the sum secured over the land which includes the tenancy land as may reasonably be regarded as attributable to the tenancy land) as is required to restrict the heritable security so as to disburden the tenancy land.
- (5) Except that the further amount is not to exceed ninety per cent of the amount fixed by virtue of head (a) or (b) of sub-paragraph (3).
- (6) T is to reimburse the expenses reasonably and properly incurred by L in conveying L's right in the tenancy land to T, including the expenses of any discharge or restriction under sub-paragraph (4).
- (7) L is, on there being tendered to L the compensation and expenses specified in this paragraph, to convey L's right in the tenancy land to T—
- (a) on such terms and conditions (additional to those relating to compensation and expenses under sub-paragraphs (3) to (6)) as may be agreed between them or, failing agreement, as may be appropriate to the circumstances of the case, and
 - (b) free of all heritable securities.
- (8) A heritable creditor ("H") whose security is over the tenancy land or land which includes the tenancy land, on there being tendered to H—
- (a) the amount mentioned in sub-paragraph (4) (as read with sub-paragraph (5)), and
 - (b) H's reasonable expenses,
- is to discharge, or as the case may be restrict, the security so as to disburden the tenancy land.
- (9) In this paragraph and in paragraphs 3 and 4, "tenant-at-will" means a person—
- (a) who, being neither a tenant under a lease nor a tenant or occupier by virtue of any enactment, is by custom or usage the occupier (actual or constructive) of land on which there is a building erected or acquired for value by the person or by any predecessor of the person,
 - (b) who is under an obligation to pay a ground rent to the owner of the land in respect of that land but not in respect of the building on it or who would have been under such an obligation if the ground rent had not been redeemed, and
 - (c) whose right of occupancy of the land is without ish.
- (10) In sub-paragraphs (6) and (7), references to the conveying of L's right in the tenancy land are to be construed in accordance with paragraph 3(11).

Provisions supplementary to paragraph 2

- 3 (1) Any question arising under paragraph 2 as to—
- (a) whether a person is a tenant-at-will,
 - (b) the extent or boundaries of any tenancy land,

- (c) the value of any tenancy land or as to what proportion of any sum secured over any land may reasonably be regarded as attributable to any tenancy land included in that land,
- (d) whether any expenses are reasonably and properly incurred, or
- (e) what are appropriate terms and conditions,

is to be determined, on the application of the tenant-at-will, a person claiming to be the tenant-at-will or the landlord, by the Lands Tribunal for Scotland.

- (2) On the application of a tenant-at-will who wishes, under paragraph 2, to acquire the landlord's interest in the tenancy land, the Lands Tribunal for Scotland may for the purposes of that acquisition, if they are satisfied that the landlord is unknown or cannot be found, make an order—
 - (a) dispensing with notice under sub-paragraph (2) of that paragraph,
 - (b) fixing an amount by way of compensation in accordance with sub-paragraph (3) of that paragraph, and
 - (c) determining appropriate terms and conditions on which the landlord's right in the tenancy land should be conveyed.
- (3) If the landlord—
 - (a) fails to convey the right in accordance with paragraph 2(7), or
 - (b) is unknown and cannot be found,

the tenant-at-will may apply to the sheriff for an order dispensing with the execution by the landlord of the conveyance in favour of the tenant-at-will and directing instead the sheriff clerk to execute the conveyance.

- (4) On making an order under sub-paragraph (3), the sheriff may require the tenant-at-will to consign in court any sums payable by the tenant-at-will under paragraph 2(3) to (6) or, as the case may be, any sums specified in an order under sub-paragraph (2).
- (5) Where, in pursuance of an order made by the sheriff under this paragraph, a conveyance is executed by the sheriff clerk, that conveyance has the like force and effect as if it had been executed by the landlord.
- (6) The sheriff may, on the application of any party, order the investment, payment or distribution of any sums consigned in court under sub-paragraph (4); and in doing so the sheriff is to have regard to the respective interests of any parties appearing to have a claim on such sums.
- (7) Nothing in section 5 of the Sheriff Courts (Scotland) Act 1907 (c.51) (extension of jurisdiction) entitles a party to an application to the sheriff under this paragraph to require it to be remitted to the Court of Session on the grounds that it relates to a question of heritable right or title.
- (8) A landlord, even if under a disability such as is mentioned in section 7 of the Lands Clauses Consolidation (Scotland) Act 1845 (c.19) (parties under disability entitled to sell or convey), has power to execute a valid conveyance in pursuance of this paragraph.
- (9) Where a person other than the landlord is owner of the subjects to be conveyed, references in paragraph 2 and in this paragraph to the landlord are to be construed as references to the landlord and such other person for their respective rights.

- (10) Any condition or provision to the effect that a person with a right in land is entitled to a right of pre-emption in the event of a sale of the land, or of any part of the land, by the proprietor for the time being, is not capable of being enforced where the sale is under paragraph 2 by a landlord to a tenant-at-will.
- (11) In this paragraph and in paragraph 2(6) and (7), references to the conveying of the landlord's right in the tenancy land are to be construed as references to a disposition by the landlord of that land or, where the landlord is a lessee under a lease, an assignation of the lease but only as regards the tenancy land.
- (12) In this paragraph, "conveyance" is to be construed accordingly.

Heritable creditors

- 4 (1) This paragraph has effect where a heritable security over tenancy land or land which includes tenancy land falls to be discharged or restricted under paragraph 2(8).
- (2) The heritable creditor is, for his interest, entitled to apply, and to be a party to, an application under paragraph 3(1).
 - (3) The Lands Tribunal for Scotland, if satisfied that the heritable creditor is unknown or cannot be found, may on the application of the tenant-at-will or the landlord (or both) make an order fixing the amount required to discharge or restrict the heritable security so as to disburden the tenancy land.
 - (4) If the heritable creditor—
 - (a) fails to disburden the tenancy land in accordance with paragraph 2(8), or
 - (b) is unknown or cannot be found,
 the tenant-at-will or the landlord (or both) may apply to the sheriff for an order dispensing with the execution by the heritable creditor of the deed of discharge or restriction in favour of the landlord and directing instead the sheriff clerk to execute the deed.
 - (5) On making an order under sub-paragraph (4), the sheriff may require the landlord to consign in court any amount or expenses which the landlord requires to pay for the purposes of paragraph 2(4) to (6) to the heritable creditor or, as the case may be, any sums specified in an order under sub-paragraph (3).
 - (6) Where, in pursuance of an order made by the sheriff under this paragraph, a deed of discharge or restriction is executed by the sheriff clerk, that deed has the like force and effect as if it had been executed by the heritable creditor.
 - (7) The sheriff may, on the application of any party, order the investment, payment or distribution of any amount consigned in court under sub-paragraph (5); and in doing so the sheriff is to have regard to the respective interests of any parties appearing to have a claim on such amount.
 - (8) Nothing in section 5 of the Sheriff Courts (Scotland) Act 1907 (c.51) (extension of jurisdiction) entitles a party to an application to the sheriff under this paragraph to require it to be remitted to the Court of Session on the grounds that it relates to a question of heritable right or title.
 - (9) A heritable creditor, even if under a disability such as is mentioned in section 7 of the Lands Clauses Consolidation (Scotland) Act 1845 (c.19) (parties under disability entitled to sell or convey), has power to execute a valid deed of discharge or restriction in pursuance of this paragraph.

Power of sheriff to grant renewals of certain long leases

- 5 (1) Where a landlord has failed to renew a long lease in implement of an obligation in or under it, the sheriff may, on summary application by the tenant, make an order directing instead the sheriff clerk to execute a renewal of the lease.
- (2) On making an order under sub-paragraph (1), the sheriff may require the tenant to consign in court such amount (whether by way of rent or expenses or otherwise) in respect of the lease and its renewal as appears to the sheriff—
 - (a) to be lawfully due and payable, or
 - (b) would have been lawfully due and payable had the landlord duly renewed the lease.
- (3) A renewal executed under this paragraph has the like force and effect as if it were executed by the landlord.
- (4) Without prejudice to sub-paragraph (7)(a), a landlord is regarded, for the purposes of sub-paragraph (1), as having failed to renew a lease in implement of an obligation in or under it if, having been given written notice in accordance with sub-paragraph (5) by the tenant that the tenant requires the landlord in implement of the obligation to renew the lease, the landlord—
 - (a) fails to do so when obliged to, and
 - (b) continues to fail to do so.
- (5) Notice is in accordance with this paragraph if it is given not less than 3 months before the lodging of the summary application.
- (6) Sub-paragraph (4) is subject to sub-paragraph (7)(b) and to any provision in or under the lease—
 - (a) for earlier, or
 - (b) for a longer period of,notice requiring renewal of the lease than that mentioned in sub-paragraph (5).
- (7) The sheriff, if satisfied that a landlord is unknown or cannot be found, may—
 - (a) in a case where that prevents the tenant from bringing the landlord, in accordance with the lease, under an obligation to renew it, order that the landlord be regarded for the purposes of sub-paragraph (1) as having failed to renew the lease in implement of an obligation under it, and
 - (b) in any other case, dispense with notice under sub-paragraph (4).
- (8) The sheriff may, on the application of any party, order the investment, payment or distribution of any sums consigned in court under sub-paragraph (2); and in doing so the sheriff is to have regard to the respective interests of any parties appearing to have a claim on such sums.
- (9) The sheriff's power under sub-paragraph (8) extends to ordering that any award of expenses of an application under this paragraph be paid out of any sums consigned in court under sub-paragraph (2).

APPENDIX TO SCHEDULE 7

FORM OF NOTICE TO BE GIVEN BY A TENANT-AT-WILL WHO WISHES TO ACQUIRE LANDLORD'S RIGHT
AS SUCH IN THE TENANCY

The form of notice referred to in paragraph 2(2) of this schedule is as follows:

“To [(1)]

Take notice that [(2)], as tenant-at-will of [(3)], requires you to make over to [him/ her] your right as landlord of the tenancy land in accordance with the provisions of section 96 of, and paragraphs 2 to 4 of schedule 7 to the Land Registration (Scotland) Act 2010.

Dated this of 20[].”.

NOTES TO FORM OF NOTICE:

- (1) To be addressed to the landlord.
- (2) Insert name and designation of the tenant-at-will.
- (3) Give the address or a short identifying description of the property to be acquired.

NOTE

This schedule, which is introduced by section 96, re-enacts sections 16, 20, 21, 22 and 22A of the 1979 Act. These provisions do not relate to the law of land registration. See paragraphs 38.2 and 38.3 of the Report.

SCHEDULE 8
(introduced by section 97)

MINOR AND CONSEQUENTIAL AMENDMENTS

Real Rights Act 1693 (c.22)

- 1 After the existing provisions of the Real Rights Act 1693 there is added—
 “Subsection (1) of section 94 of the Land Registration (Scotland) Act 2010 (asp 00) (interpretation of certain references) does not apply to the foregoing provisions of this Act.”.

NOTE

This Act was disappplied to the Land Register by the 1979 Act s 29(3). This provision continues that disapplication. See paragraphs 38.7 and 38.8 of the Report.

Register of Sasines Act 1693 (c.23)

- 2 After the existing provisions of the Register of Sasines Act 1693 there is added—
 “Subsection (1) of section 94 of the Land Registration (Scotland) Act 2010 (asp 00) (interpretation of certain references) does not apply to the foregoing provisions of this Act.”.

NOTE

This Act was disappplied to the Land Register by the 1979 Act s 29(3). This provision continues that disapplication. See paragraphs 38.7 and 38.8 of the Report.

Lands Clauses Consolidation (Scotland) Act 1845 (c.19)

- 3 In Schedule (A.) (form of conveyance) to the Lands Clauses Consolidation (Scotland) Act 1845, in the note—
- (a) for the words “Subscription of the document by the granter of it” there is substituted “In the case of a traditional document, subscription of it by the granter”, and
 - (b) for the words “(see the Requirements of Writing (Scotland) Act 1995 (c.7))” there is substituted “: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)”.

NOTE

This amends the note about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the draft Bill.

Commissioners Clauses Act 1847 (c.16)

- 4 (1) The Commissioners Clauses Act 1847 is amended as follows.
- (2) In section 59(2) (conveyance of lands by commissioners)—
- (a) in paragraph (a), for the words from “by a document” to the end there is substituted—
“by a document—
 - (a) if they are a corporation, subscribed or authenticated in accordance with the Requirements of Writing (Scotland) Act 1995,
 - (b) if they are not a corporation, so subscribed or authenticated by the commissioners or by any two of them acting by the authority of and on behalf of the commissioners;and a document so subscribed or authenticated, duly registered in the Land Register of Scotland”, and
 - (b) in paragraph (b), for the words “word “subscribed”” there is substituted “words “subscribed or authenticated””.
- (3) In section 75(2)(c) (form of mortgage)—
- (a) in sub-paragraph (i), the words “section 7 of, and paragraph 5 of Schedule 2 to,” are repealed, and
 - (b) in sub-paragraph (ii), for the words “section 7” there is substituted “Act”.

NOTE

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. See Part 34 of the Report and the note to schedule 5 of the draft Bill.

Subparagraph (3) replaces the specific reference to the Requirements of Writing (Scotland) Act 1995 with a more general reference to the Act.

Ordnance Board Transfer Act 1855 (c.117)

- 5 In section 5(2) of the Ordnance Board Transfer Act 1855 (description in conveyances etc.), after the word “subscribing” there is inserted “, or as the case may be authenticating,”.

NOTE

This paragraph amends section 5(2) to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the draft Bill.

Transmission of Moveable Property (Scotland) Act 1862 (c.85)

- 6 In each of Schedules A (form for assignation of bond or conveyance) and B (form of bond or conveyance) to the Transmission of Moveable Property (Scotland) Act 1862, in the note relating to subscription of the document in question—
- (a) for the words “Subscription of the document by the granter of it” there is substituted “In the case of a traditional document, subscription of it by the granter”, and
 - (b) for the words “(see the Requirements of Writing (Scotland) Act 1995 (c.7))” there is substituted “: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)”.

NOTE

This amends the notes about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the draft Bill.

Land Registers (Scotland) Act 1868 (c.64)

- 7 After section 25 of the Land Registers (Scotland) Act 1868 there is inserted—

“25A Disapplication of certain provisions as to interpretation

Subsection (1) of section 94 of the Land Registration (Scotland) Act 2010 (asp 00) (interpretation of certain references) does not apply to any of sections 2, 3, 5, 6, 7, 9, 12, 14 or 23 of this Act.”.

NOTE

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. See paragraphs 38.7 and 38.8 of the Report.

Titles to Land Consolidation (Scotland) Act 1868 (c.101)

- 8 (1) The Titles to Land Consolidation (Scotland) Act 1868 is amended as follows.
- (2) In section 159 (litigiosity not to begin before date of registration of notice of summons), the existing provisions become subsection (1); and after that subsection there is added—
- “(2) A notice registered under subsection (1) of this section on or after the date on which section 78 of the Land Registration (Scotland) Act 2010 (asp 00) (warrant to place a caveat) comes into force shall not have any effect in rendering litigious any land a title sheet for which is comprised in the Land Register of Scotland or in placing in bad faith any person acquiring such land.”.
- (3) In section 159A—
- (a) in each of subsections (2)(b) and (3)(b), the words “register in the Land Register of Scotland or, as the case may be,” are repealed, and
- (b) at the end there is added—
- “(4) The foregoing provisions of this section do not apply in relation to lands a title sheet for which is comprised in the Land Register of Scotland.”.
- (4) After section 159A there is inserted—
- “159B Disapplication of certain provisions as to interpretation**
- Subsection (1) of section 94 of the Land Registration (Scotland) Act 2010 (asp 00) (interpretation of certain references) does not apply to—
- (a) any of sections 12, 13, 142 or 143 of, or
- (b) Schedule F (in so far as relating to section 12) or G (in so far as relating to section 13) to,
- this Act.”.
- (5) In Schedule B No. 1 (formal clauses of a disposition of land etc.), in the note relating to subscription of the document in question—
- (a) for the words “Subscription of the document by the granter of it” there is substituted “In the case of a traditional document, subscription of it by the granter”, and
- (b) for the words “(see the Requirements of Writing (Scotland) Act 1995 (c.7))” there is substituted “: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)”.

NOTE

Subparagraphs (2) and (3), which are about litigiosity, are disapplied in relation to the Land Register. The reason is that the situations they deal with will be dealt with by caveats. See Part 32 of the Report.

The effect of the amendment made by subparagraph (4) is to make clear that the provisions of the 1868 Act which are referred to do not apply to the Land Register. See paragraphs 38.7 and 38.8 of the Report.

Subparagraph (5) amends the note about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the draft Bill.

Conveyancing (Scotland) Act 1874 (c.94)

9 (1) The Conveyancing (Scotland) Act 1874 is amended as follows.

(2) After section 66 there is inserted—

“66A Disapplication of certain provisions as to interpretation

Subsection (1) of section 94 of the Land Registration (Scotland) Act 2010 (asp 00) (interpretation of certain references) does not apply to either of sections 50(1) and 61 of, or to Schedule M to, this Act.”.

(3) In Schedule M (form of assignation of right of relief etc.), in the note—

- (a) for the words “Subscription of the document by the granter of it” there is substituted “In the case of a traditional document, subscription of it by the granter”, and
- (b) for the words “(see the Requirements of Writing (Scotland) Act 1995 (c.7))” there is substituted “: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)”.

NOTE

The effect of the amendment made by subparagraph (2) is to make clear that the provisions of the 1874 Act which are referred to do not apply to the Land Register. See paragraphs 38.7 and 38.8 of the Report.

Subparagraph (3) amends the note about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the draft Bill.

Writs Execution (Scotland) Act 1877 (c.40)

10 After section 7 of the Writs Execution (Scotland) Act 1877 there is inserted—

“7A Disapplication of certain provisions as to interpretation

Subsection (1) of section 94 of the Land Registration (Scotland) Act 2010 (asp 00) (interpretation of certain references) does not apply to either of sections 5 and 6 of this Act.”.

NOTE

The effect of this amendment is to make clear that sections 5 and 6 of the 1877 Act do not apply to the Land Register. See paragraphs 38.7 and 38.8 of the Report.

Trusts (Scotland) Act 1921 (c.58)

11 (1) The Trusts (Scotland) Act 1921 is amended as follows.

(2) In Schedule A (form of minute of resignation), in the note relating to subscription of the document in question—

- (a) for the words “Subscription of the document by the granter of it” there is substituted “In the case of a traditional document, subscription of it by the granter”, and

- (b) for the words “(see the Requirements of Writing (Scotland) Act 1995 (c.7))” there is substituted “: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)”.
- (3) In Schedule B (form of deed of assumption), in the note relating to subscription of the document in question—
 - (a) for the words “Subscription of the document by the granter or granters of it” there is substituted “In the case of a traditional document, subscription of it by the granter or granters”, and
 - (b) for the words “(see the Requirements of Writing (Scotland) Act 1995 (c.7))” there is substituted “: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)”.

NOTE

Subparagraphs (2) and (3) amend the notes about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the draft Bill.

Conveyancing (Scotland) Act 1924 (c.27)

- 12 (1) The Conveyancing (Scotland) Act 1924 is amended as follows.
- (2) In section 2(5) (interpretation), after the word “registrable” there is inserted “in the Land Register of Scotland or”.
 - (3) In section 3 (disposition etc.), for the word “manner” there is substituted “such manner as was (immediately before the repeal of the note)”.
 - (4) In section 44 (General Register of Inhibitions and Register of Adjudications to be combined; limitation of effect of entries therein), after subsection (2) there is inserted—
 - “(2A) A notice registered under subsection (2)(a)(i) of this section on or after the date on which section 78 of the Land Registration (Scotland) Act 2010 (asp 00) (warrant to place a caveat) comes into force shall not have any effect in rendering—
 - (a) any land or lease comprised in the Land Register of Scotland, or
 - (b) any heritable security the particulars of which are entered in a title sheet so comprised,
 litigious or in placing in bad faith any person acquiring such land, lease or heritable security.”.
 - (5) After section 49 there is added—
 - “49A Disapplication of certain provisions as to interpretation**
 - Subsection (1) of section 94 of the Land Registration (Scotland) Act 2010 (asp 00) (interpretation of certain references) does not apply to the following provisions of this Act—
 - (a) section 3 from the words “and who” to “in the case of a heritable security.”,
 - (b) section 4,
 - (c) section 8,

- (d) in section 24, subsections (2) and (3) and that part of subsection (5) from the words “provided that” to the end,
 - (e) section 46,
 - (f) sections 47 and 48,
 - (g) section 49(2),
 - (h) in Schedule A, form No.1,
 - (i) in Schedule B, except in so far as they relate to the completion of title under section 74 or 76 of the Lands Clauses Consolidation (Scotland) Act 1845 (c.19), forms 1 to 6 and note 7,
 - (j) Schedule D, and
 - (k) Schedule J.”.
- (6) In Schedule B (notice of title), in note 8 to that Schedule—
- (a) for the words “Subscription of the document” there is substituted “In the case of a traditional document, subscription of it”, and
 - (b) for the words “(see the Requirements of Writing (Scotland) Act 1995 (c.7))” there is substituted “: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)”.
- (7) The title of Schedule B becomes—

“FORMS OF NOTICE OF TITLE: REGISTER OF SASINES”.

- (8) After Schedule B there is inserted—

“SCHEDULE BA

FORM OF NOTICE OF TITLE: LAND REGISTER

Be it known that *A.B. (designation)* has right as proprietor to all and whole (*description*) conform to the last completed title and subsequent writ (*or writs*), which title and writ (*or writs*) have been examined by me, *Y.Z. (designation)*, Notary Public (*or Law Agent*).

[*Testing clause.*]

Y.Z.

NOTES TO SCHEDULE BA

Note 1: Where the notice is in respect of a subordinate real right, other than a registered lease having its own title sheet, for “proprietor to” substitute “holder of liferent (*or as the case may be*) over”.

Note 2: Where the notice is in respect of a registered lease having its own title sheet, for “proprietor to” substitute “tenant of”.

Note 3: If any writ by which A.B. acquired right contains a new title condition, whether burdening or benefiting the property, the condition is to be inserted in full after the description of the property.

Note 4: In the case of a traditional document, subscription of it by the notary public (or law agent) on behalf of the granter will suffice for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)”.

NOTE

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

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.

Subparagraph (4) is similar to the provisions in paragraph 8(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. See Part 32 of the Report.

The effect of the amendment made by subparagraph (5) is to make clear that the provisions of the 1924 Act which are referred to do not apply to the Land Register. See paragraphs 38.7 and 38.8 of the Report.

Subparagraph (6) amends the note about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the draft Bill.

Subparagraphs (7) and (8) are about notices of title. The draft Bill introduces a simple form of notice of title for use in the Land Register. See Part 15 of the Report.

Public Registers and Records (Scotland) Act 1948 (c.57)

13 After section 6 of the Public Registers and Records (Scotland) Act 1948 there is inserted—

“6A Disapplication of certain provisions as to interpretation

Subsection (1) of section 94 of the Land Registration (Scotland) Act 2010 (asp 00) (interpretation of certain references) does not apply to either of sections 2 and 4 of this Act.”.

NOTE

The effect of this amendment is to make clear that sections 2 and 4 of the 1948 Act do not apply to the Land Register. See paragraphs 38.7 and 38.8 of the Report.

Public Registers and Records (Scotland) Act 1950 (c.11)

14 In section 1 of the Public Registers and Records (Scotland) Act 1950 (certificate of recording in Register of Sasines need not be signed), after subsection (1) there is inserted—

“(1A) Subsection (1) of section 94 of the Land Registration (Scotland) Act 2010 (asp 00) (interpretation of certain references) does not apply to subsection (1) above.”.

NOTE

The effect of this amendment is to make clear that section 1(1) of the 1950 Act does not apply to the Land Register. See paragraphs 38.7 and 38.8 of the Report.

Land Drainage (Scotland) Act 1958 (c.24)

- 15 In section 18(1) of the Land Drainage (Scotland) Act 1958 (interpretation), in the definition of “long lease”, after the word “Sasines” there is inserted “or in the Land Register of Scotland”.

NOTE

This paragraph amends the definition of long lease by adding a reference the Land Register.

Harbours Act 1964 (c.40)

- 16 In section 57(1) of the Harbours Act 1964 (interpretation), in the definition of “long lease”, after the word “Sasines” there is inserted “or in the Land Register of Scotland”.

NOTE

This paragraph amends the definition of long lease by adding a reference the Land Register.

Succession (Scotland) Act 1964 (c.41)

- 17 In section 21A(a) of the Succession (Scotland) Act 1964 (evidence as to testamentary documents in commissary proceedings), for the word “4” there is substituted “10C”.

NOTE

This amendment is consequential on the changes made to the 1995 Act by schedule 5. The reference to section 4 is replaced by a reference to the equivalent provision (section 10C) in the 1995 Act as amended.

Industrial and Provident Societies Act 1965 (c.12)

- 18 (1) The Industrial and Provident Societies Act 1965 is amended as follows.
- (2) In section 29D (execution of documents: Scotland), after the word “subscribed” there is inserted “(or, in the case of an electronic document, authenticated)”.
 - (3) In section 29G(2)(a) (authorisation of use of official seal), after the word “subscribed” there is inserted “or authenticated”.
 - (4) In Schedule 3 (form of receipt on mortgage, heritable security etc.), in each of forms C, D and E, in the note to the form in question—
 - (a) for the words “Subscription of the document by the granter of it” there is substituted “In the case of a traditional document, subscription of it by the granter”, and
 - (b) for the words “(see the Requirements of Writing (Scotland) Act 1995 (c.7))” there is substituted “: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)”.

- (5) In Schedule 4 (forms of bond for officers of society), in the note to form C—
- (a) for the words “Subscription of the document” there is substituted “In the case of a traditional document, subscription of it”, and
 - (b) for the words “(see the Requirements of Writing (Scotland) Act 1995 (c.7))” there is substituted “: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)”.

NOTE

Subparagraphs (2) and (3) amend the sections mentioned to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the Bill.

Subparagraphs (4) and (5) amend the notes about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the draft Bill.

Gas Act 1965 (c.36)

- 19 In section 28(1) of the Gas Act 1965 (interpretation of Part 2 of the Act), in the definition of “long lease” for the purposes of the definition of “owner”, after the word “Sasines” there is inserted “or in the Land Register of Scotland”.

NOTE

This paragraph amends the definition of long lease by adding a reference the Land Register.

Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35)

- 20 (1) The Conveyancing and Feudal Reform (Scotland) Act 1970 is amended as follows.
- (2) In section 9 (the standard security)—
- (a) in subsection (2), after the words “competent to” there is inserted “grant and register in the Land Register of Scotland or”,
 - (b) in subsection (4)—
 - (i) after the word “duly” there is inserted “registered or”, and
 - (ii) after the word “clear” there is inserted “the Land Register of Scotland or”, and
 - (c) in subsection (8), both—
 - (i) in paragraph (a), after the words “and of being”, and
 - (ii) in paragraph (b), after the word “be”,
 there is inserted “registered in the Land Register of Scotland or”.
- (3) In section 10(4) (import of forms of, and certain clauses in, standard security), after the word “duly” there is inserted “registered or”.
- (4) In section 11(1) (effect of recorded standard security, and incorporation of standard security), after the word “duly” there is inserted “registered or”.

- (5) The title of section 11 as so amended becomes “Effect of registered or recorded standard security; and incorporation of standard conditions”.
- (6) In section 12 (standard security may be granted by person uninfert), for subsections (1) and (2) there is substituted—
- “(1A) Notwithstanding any rule of law, a standard security may be granted over land or a real right in land by a person whose title thereto has not been completed by being duly registered or recorded.
- (1B) If the deed expressing the security is to be recorded in the Register of Sasines, the grantor must, in that deed, deduce his title to the land or real right from the person who appears in the Register of Sasines as having the last recorded title thereto.
- (2A) Any such deduction of title is to be expressed in the form prescribed by Note 2 or 3 of Schedule 2 to this Act.
- (2B) On a deed expressing the security being registered or recorded as aforesaid, the title of the grantee shall, for the purposes of the rights and obligations between the grantor and the grantee thereof and those deriving right from them, but for no other purpose, in all respects be of the same effect as if the title of the grantor of the deed to the land or real right in land had been duly completed; and any references to a proprietor or to a person having the last registered or recorded title shall in this Part of this Act be construed accordingly.
- (7) In section 13 (ranking of standard securities)—
- (a) in subsection (1), both—
- (i) after the word “duly”, and
- (ii) after the word “so”,
- there is inserted “registered or”, and
- (b) in subsection (2)(a)—
- (i) after the word “duly” there is inserted “registered or”,
- (ii) after the word “subsequent” there is inserted “registration or”, and
- (iii) after the words “in the” there is inserted “Land Register of Scotland or”.
- (8) In section 14(1) (assignment of standard security), after the word “duly”, in both places where it occurs, there is inserted “registered or”.
- (9) In section 15 (restriction of standard security)—
- (a) in subsection (1), after the word “duly”, in both places where it occurs, there is inserted “registered or”, and
- (b) in subsection (2), after the word “duly” there is inserted “registered or”
- (10) In section 16 (variation of standard security)—
- (a) in subsection (1), after the word “duly”, in both places where it occurs, there is inserted “registered or”,
- (b) in subsection (2)—
- (i) both after the word “duly” and after the word “so” there is inserted “registered or”, and

- (ii) after the words “to be” there is inserted “registered in the Land Register of Scotland or”, and
- (c) in subsection (4)—
 - (i) after the words “variation is” there is inserted “registered or”, and
 - (ii) after the words “by an” there is inserted “unregistered or”.
- (11) In section 17 (discharge of standard security), after the word “duly”, in both places where it occurs, there is inserted “registered or”.
- (12) In section 18(3) (redemption of standard security), after the word “duly” there is inserted “registered or”.
- (13) In section 19 (calling-up of standard security)—
 - (a) in subsection (2)—
 - (i) after the word “last”, in both places where it occurs, there is inserted “registered or”,
 - (ii) after the words “and appearing” there is inserted “in the Land Register of Scotland or”,
 - (iii) after the word “record” there is inserted “of the Register of Sasines”, and
 - (iv) after the words “not appearing in the” there is inserted “Land Register of Scotland”, and
 - (b) in subsection (3), after the word “last”, in both places where it occurs, there is inserted “registered or”.
- (14) In section 26 (disposition by creditor on sale)—
 - (a) in subsection (1), after the word “duly” there is inserted “registered or”, and
 - (b) in subsection (2), after the words “security, the” there is inserted “registration or”.
- (15) In section 27(1)(c) (application of proceeds of sale), after the word “duly” there is inserted “registered or”.
- (16) In section 28 (foreclosure)—
 - (a) in subsection (5)—
 - (i) after the word “duly” there is inserted “registered or”,
 - (ii) for the words “section 15 of the Land Registration (Scotland) Act 1979” there is substituted “the Land Registration (Scotland) Act 2010 (asp 00),
 - (iii) after the words “warrant for” there is inserted “registering or”, and
 - (iv) after the words “decree in” there is inserted “the Land Register of Scotland or”,
 - (b) in subsection (6)—
 - (i) after the word “duly”, in both places where it occurs, there is inserted “registered or”, and
 - (ii) in paragraph (a), after the words “of the” there is inserted “registration or”, and
 - (c) in subsection (7), after the word “due” there is inserted “registration or”.
- (17) In section 30(1) (interpretation of Part 2)—

- (a) for the definition of “duly recorded” there is substituted ““duly registered or recorded” means registered in the Land Register of Scotland or recorded in the Register of Sasines;”, and
 - (b) at the appropriate place there is inserted—
 - ““recorded” means recorded in the Register of Sasines;
 - “registered” means registered in the Land Register of Scotland;”.
- (18) In section 53(4) (interpretation of Act other than Part 2), for the definition of “duly recorded” there is substituted ““duly registered or recorded” means registered in the Land Register of Scotland or recorded in the Register of Sasines;”.
- (19) After section 53 there is inserted—
- “53A Disapplication of certain provisions as to interpretation**
- Subsection (1) of section 94 of the Land Registration (Scotland) Act 2010 (asp 00) (interpretation of certain references) does not apply to the provisions of this Act.”.
- (20) In the notes to Schedule 2 (forms of standard security)—
- (a) in note 2, after the words “security subjects” there is inserted “and the deed is to be recorded in the Register of Sasines”,
 - (b) in note 3, after the words “a standard security” there is inserted “to be recorded in the Register of Sasines”,
 - (c) in note 4, after the words “require to be” there is inserted “registered in the Land Register of Scotland or”, and
 - (d) in note 8—
 - (i) for the words “Subscription of the document by the granter of it” there is substituted “In the case of a traditional document, subscription of it by the granter”, and
 - (ii) for the words “(see the Requirements of Writing (Scotland) Act 1995 (c.7))” there is substituted “: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)”.
- (21) In paragraph 12 of Schedule 3 (the standard conditions)—
- (a) before the word “recorded” there is inserted “registered or”, and
 - (b) before the word “recording” there is inserted “registration or”.
- (22) In Schedule 4 (forms of deeds of assignation, restriction etc.) in each of forms A, C, D, E and F, for the words “recorded in the register for.....on.....” there is substituted “registered in the Land Register of Scotland on.....over title number.....(or recorded in the Register for.....on.....)”.
- (23) In the notes to Schedule 4—
- (a) in note 1—
 - (i) after the words “not a recorded title” there is inserted “and the deed is to be recorded in the Register of Sasines”, and
 - (ii) after the words “has a” there is inserted “registered or”,

- (b) in note 3—
 - (i) after the words “than by” there is inserted “registration of the security in the Land Register of Scotland or”, and
 - (ii) for the word “recorded” there is substituted “registered (*or* recorded)”,
 - (c) in note 5—
 - (i) before the word “recorded”, in the first two places where it occurs, there is inserted “registered or”, and
 - (ii) after the words “required to be” there is inserted “registered in the Land Register of Scotland or”,
 - (d) in note 6, after the words “to the security subjects” there is inserted “ and the deed is to be recorded in the Register of Sasines”, and
 - (e) in note 7—
 - (i) for the words “Subscription of the document by the granter of it” there is substituted “In the case of a traditional document, subscription of it by the granter”, and
 - (ii) for the words “(see the Requirements of Writing (Scotland) Act 1995 (c.7))” there is substituted “: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)”.
- (24) In Schedule 5 (procedures as to redemption)—
- (a) in each of forms A and D (Nos. 1 and 2), for the words “recorded in the register for.....on.....” there is substituted “registered in the Land Register of Scotland on.....over title number.....(*or* recorded in the Register for.....on.....)”, and
 - (b) in the note to form D—
 - (i) for the words “Subscription of the document by the granter of it” there is substituted “In the case of a traditional document, subscription of it by the granter”, and
 - (ii) for the words “(see the Requirements of Writing (Scotland) Act 1995 (c.7))” there is substituted “: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)”.
- (25) In Schedule 6 (procedures as to calling-up and default), in each of forms A and B, for the words “recorded in the register for.....on.....” there is substituted “registered in the Land Register of Scotland on.....over title number.....(*or* recorded in the Register for.....on.....)”.
- (26) In Schedule 9 (discharge of heritable security constituted by *ex facie* absolute conveyance), in note 4—
- (a) for the words “Subscription of the document by the granter of it” there is substituted “In the case of a traditional document, subscription of it by the granter”, and
 - (b) for the words “(see the Requirements of Writing (Scotland) Act 1995 (c.7))” there is substituted “: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)”.

NOTE

The 1970 Act was not amended by the 1979 Act so as to take account of the introduction of the Land Register. The 1970 Act was instead subject to the "translation" provision in section 29(2) of the 1979 Act under which references to the Register of Sasines and the recording of deeds in that register were deemed to be references to the Land Register or registration. This approach has not made the 1970 Act easy to understand. The majority of amendments in this paragraph are designed to add references (where appropriate) to the Land Register. The substance of the provisions remains the same. See paragraphs 38.7 and 38.8 of the Report.

The amendment to section 28(5) updates the means of describing the security subjects in a decree of foreclosure following the repeal of the 1979 Act.

The notes which are found in various schedules about mode of execution under the Requirements of Writing (Scotland) Act 1995 are amended to take account of documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the draft Bill.

Prescription and Limitation (Scotland) Act 1973 (c.52)

- 21 (1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.
- (2) In section 2 (special cases)—
- (a) in subsection (1)(b), for the words “whether recorded or not” there is substituted “whether or not registered or recorded”,
 - (b) in subsection (2)(b), after the word “been” there is inserted “registered or”, and
 - (c) in subsection (3), for the words “section 1 of this Act or to section 3(3) of the Land Registration (Scotland) Act 1979 (c.33)” there is substituted “section 1A or 1B of this Act or to section 20B or 20C of the Registration of Leases (Scotland) Act 1857 (c.26)”.
- (3) In section 4(1) (judicial interruption of periods of possession for purposes of sections 1, 2 and 3), for the word “1” there is substituted “1A, 1B”.
- (4) The title of section 4 becomes “Judicial interruption of periods of possession for purposes of sections 1A, 1B, 2 and 3”.
- (5) In section 5(1) (further provisions supplementary to sections 1, 2 and 3), for the word “1” there is substituted “1A, 1B”.
- (6) The title of section 5 becomes “Further provisions supplementary to sections 1A, 1B, 2 and 3”.
- (7) In section 15(1) (interpretation of Part 1 of the Act)—
- (a) in the definition of “prescriptive period”, for the word “1” there is substituted “1A, 1B”, and
 - (b) at the end there is added “and to the registering of a deed are to the registering thereof in the Land Register of Scotland”.
- (8) After section 24 there is inserted—
- “24A Disapplication of certain provisions as to interpretation**
- Subsection (1) of section 94 of the Land Registration (Scotland) Act 2010 (asp 00) (interpretation of certain references) does not apply to the provisions of this Act.”.

- (9) In paragraph 1 of Schedule 1 (obligations affected by prescriptive periods of 5 years under section 6 of that Act), after sub-paragraph (ac) there is inserted—
- “(ad) to any obligation of the Keeper of the Registers of Scotland to pay compensation by virtue of section 55 of the Land Registration (Scotland) Act 2010 (asp 00);”.
- (10) In paragraph 2 of that Schedule (obligations which, notwithstanding paragraph 1 of the Schedule, are not affected by prescriptive periods of 5 years under section 6 of that Act), in sub-paragraph (e), after the word “servitude)” there is inserted “and any obligation of the Keeper of the Registers of Scotland to pay compensation by virtue of section 39 or 51 of the Land Registration (Scotland) Act 2010 (asp 00)”.
- (11) In Schedule 3 (rights and obligations which are imprescriptible for certain purposes of that Act) after sub-paragraph (h) there is added—
- “(i) any obligation of the Keeper of the Registers of Scotland to rectify an inaccuracy in the Land Register of Scotland”.

NOTE

This paragraph makes certain changes to the 1973 Act. Other changes to the Act are made by section 86 and accordingly reference should also be made to the note on those changes. See generally Part 35 of the Report.

Subparagraph (2)(a) and (b) amend section 2 of the 1973 Act by adding references to registration in the Land Register.

Subparagraph (2)(c) updates the references in section 2 to section 1 of the 1973 Act and section 3(3) of the 1979 Act. In the latter case new sections 20B and 20C of the 1857 Act replace section 3(3) in relation to leases. See the note on those provisions in schedule 4 of the draft Bill.

Subparagraphs (3) to (7) change the references in the provisions referred to from section 1 to section 1A and 1B. Subsection (7) also adds a reference to registration in the Land Register to the end of section 15(1) of the 1973 Act.

Subparagraph (8) adds a new section 24A disapplying the translation provision in section 94(1) of the draft Bill.

Subparagraphs (9) and (10) make changes to Schedule 1 of the 1973 Act to implement the policy that the period of negative prescription should be five years for claims against the Keeper where the Register has been rectified in favour of the claimant and twenty years for claims against the Keeper arising out of breach of warranty or from the operation of the realignment principle. The changes implement recommendation 142. See paragraphs 35.12 to 35.14 of the Report.

Subparagraph (11) amends Schedule 3 by adding to the list of imprescriptible rights and obligations the obligation of the Keeper to rectify an inaccuracy. This implements recommendation 141. See paragraphs 35.10 to 35.11 of the Report.

Education (Scotland) Act 1980 (c.44)

- 22 In section 16(2) of the Education (Scotland) Act 1980 (transference of denominational schools to education authorities)—
- (a) for paragraphs (a) and (b) there is substituted “by registration in the Land Register of Scotland of an ordinary disposition or other deed of conveyance by the persons vested with the title”, and

- (b) for the words “the recording of the deed of conveyance or, as the case may be,” there is substituted “such”.

NOTE

This paragraph amends section 16(2) of the Education (Scotland) Act 1980 to take account of the fact that as from the designated day it will not be possible to record a disposition in the Register of Sasines.

Water (Scotland) Act 1980 (c.45)

- 23 (1) The Water (Scotland) Act 1980 is amended as follows.
 - (2) In section 58(5) (termination of right to supply of water on special terms), for the words from “record” to the end there is substituted “—
 - (a) register in the Land Register of Scotland any agreement entered into, or order made, under the foregoing provisions of this section terminating an obligation to which this section applies if the obligation was itself registered in the Land Register, or
 - (b) record in the Register of Sasines any such agreement or order if the obligation was itself recorded in the Register of Sasines.”.
 - (3) In section 65 (as applied by section 75(4) of the Agricultural Holdings (Scotland) Act 1991 (c.55) and saved in that application by section 179(2) of the Local Government etc. (Scotland) Act 1994 (c.39)), in each of subsections (4) and (6), for the words “recorded in the appropriate” there is substituted “registered in the Land Register of Scotland or recorded in the”.
 - (3) In section 68(2) (agreements as to drainage), for the words “recorded in the appropriate” there is substituted “registered in the Land Register of Scotland or recorded in the”.

NOTE

Subparagraphs (2), (3) and (4) amend the provisions referred to by adding a reference to registration in the Land Register.

Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59)

- 24 In section 13(8) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (transfer of tenancy), in the definition of—
 - (a) “long lease”, for the words “28(1) of the Land Registration (Scotland) Act 1979” there is substituted “10(2) of the Land Registration (Scotland) Act 2010 (asp 00)”, and
 - (b) “tenant-at-will”, for the words “section 20(8) of the Land Registration (Scotland) Act 1979” there is substituted “paragraph 2(9) of schedule 7 to that Act of 2010”.

NOTE

This paragraph replaces the references to the 1979 Act with references to the equivalent provisions in the draft Bill.

Civil Aviation Act 1982 (c.16)

25 In section 55 of the Civil Aviation Act 1982 (c.16) (registration of orders etc. under Part 2 of the Act)—

- (a) in subsection (2), the words “in the Land Register of Scotland” are repealed,
- (b) in subsection (3), for the words from “as” to “interest” there is substituted “, and on being registered shall be enforceable against any person having or subsequently acquiring any right”, and
- (c) for subsection (4) there is substituted—

“(4) References in—

(a) subsection (2) above to registering a grant or agreement, or

(b) subsection (3) above to registering an instrument,

are to registering it in the Land Register of Scotland or, as the case may be, to recording it in the Register of Sasines.”.

NOTE

This paragraph simplifies and updates the provisions referred to following the repeal of the 1979 Act.

Litter Act 1983 (c.35)

26 In section 8 of the Litter Act 1983 (provisions supplementary to section 7 of the Act)—

- (a) in subsection (3), for the words from “be registered” to “so registered” there is substituted “—

(a) if the land is registered in the Land Register of Scotland, be registered in that register, and

(b) in any other case, be recorded in the Register of Sasines; and if the agreement is so registered or recorded it”, and

- (b) subsection (4) is repealed.

NOTE

This paragraph simplifies and updates section 8 following the repeal of the 1979 Act.

Health and Social Services and Social Security Adjudications Act 1983 (c.41)

27 In section 23(1) of the Health and Social Services and Social Security Adjudications Act 1983 (arrears of contributions secured over interest in land in Scotland), for the words “1979” there is substituted “2010”.

NOTE

This paragraph replaces the reference to the 1979 Act with a reference to the draft Bill.

Housing Associations Act 1985 (c.69)

- 28 In section 68(6) of the Housing Associations Act 1985 (loans by Public Works Loan Commissioners: Scotland), after the word “lease” there is inserted “registered or”.

NOTE

This paragraph adds a reference to registration in the Land Register.

Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73)

- 29 In section 8 of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (rectification of defectively expressed documents)—
- (a) in subsection (7), at the end there is added “except that this subsection is subject to subsection (8A) below.”, and
 - (b) after subsection (8) there is inserted—
“(8A) A notice under subsection (7) above registered on or after the date on which section 78 of the Land Registration (Scotland) Act 2010 (asp 00) (warrant to place a caveat) comes into force shall not have any effect in rendering litigious any land a title sheet for which is comprised in the Land Register of Scotland or in placing in bad faith any person acquiring such land.”.

NOTE

This paragraph disapplies section 8(7) of the 1985 Act to the Land Register. The reason is that the matter will be covered by the caveat procedure in relation to property in the Land Register. See Part 32 of the Report.

Electricity Act 1989 (c.29)

- 30 In Schedule 10 to the Electricity Act 1989 (transfers under sections 66 and 67 of the Act), in paragraph 5(3), for the words—
- (a) “subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979” there is substituted “sub-paragraphs (1) and (2) of paragraph 1 of schedule 7 to the Land Registration (Scotland) Act 2010 (asp 00)”, and
 - (b) “each of those subsections” there is substituted “sub-paragraph (2) of that paragraph”.

NOTE

This paragraph replaces a reference to the 1979 Act with a reference to the equivalent provisions in the draft Bill. Section 16(2) of the 1979 Act has already been repealed.

Property Misdescriptions Act 1991 (c.29)

- 31 In section 1(6) of the Property Misdescriptions Act 1991 (offence of property misdescription), for paragraph (b) there is substituted—
“(b) in Scotland is a reference to the transfer or creation of any right in or over land, (“right in or over land” including ownership and any heritable security or servitude but excluding any lease which is not a long lease).”.

NOTE

This paragraph replaces the reference to interest in land, which is the language of the 1979 Act, with a reference to right in land which is the language of the draft Bill.

Agricultural Holdings (Scotland) Act 1991 (c.55)

- 32 In section 75(1) of the Agricultural Holdings (Scotland) Act 1991 (power of tenant and landlord to obtain charge on holding), after the word “recorded” there is inserted “or registered”.

NOTE

This amendment adds a reference to registration following the amendment of the 1857 Act to include references to registration in the Land Register of Scotland.

Railways Act 1993 (c.43)

- 33 (1) The Railways Act 1993 is amended as follows.
- (2) In paragraph 3(4)(c) of Schedule 7 (transfer of relevant activities in connection with railway administration orders), for the words—
- (a) “subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979” there is substituted “sub-paragraphs (1) and (2) of paragraph 1 of schedule 7 to the Land Registration (Scotland) Act 2010 (asp 00)”, and
 - (b) “each of those subsections” there is substituted “sub-paragraph (2) of that paragraph”.
- (3) In paragraph 4(3) of Schedule 8 (transfer by transfer scheme), for the words—
- (a) “subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979” there is substituted “sub-paragraphs (1) and (2) of paragraph 1 of schedule 7 to the Land Registration (Scotland) Act 2010 (asp 00)”, and
 - (b) “each of those subsections” there is substituted “sub-paragraph (2) of that paragraph”.

NOTE

These paragraphs replace a reference to the 1979 Act with a reference to the equivalent provisions in the draft Bill. Section 16(2) of the 1979 Act has already been repealed.

Coal Industry Act 1994 (c.21)

- 34 (1) The Coal Industry Act 1994 is amended as follows.
- (2) In section 10(2)(b) (protection for certain interests in coal and coal mines)—
- (a) for the word “1” there is substituted “1A, 1B”, and
 - (b) for the words “prescriptive possession on ex facie valid deed” there is substituted “validity of real right”.
- (3) In Schedule 2 (restructuring schemes), in paragraph 4(4), for the words—

- (a) “subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979” there is substituted “sub-paragraphs (1) and (2) of paragraph 1 of schedule 7 to the Land Registration (Scotland) Act 2010 (asp 00)”, and
- (b) “each of those subsections” there is substituted “sub-paragraph (2) of that paragraph”.

NOTE

Subparagraph (2) amends the section mentioned to take account of the replacement of section 1 of the Prescription and Limitation (Scotland) Act 1973 by sections 1A and 1B. See the note to section 86 of the Bill.

Subparagraph (3) replaces a reference to the 1979 Act with a reference to the equivalent provisions in the draft Bill. Section 16(2) of the 1979 Act has already been repealed.

Atomic Energy Authority Act 1995 (c.37)

- 35 In Schedule 1 to the Atomic Energy Authority Act 1995 (transfer schemes: supplementary provisions), in paragraph 5(4), for the words—
- (a) “subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979” there is substituted “sub-paragraphs (1) and (2) of paragraph 1 of schedule 7 to the Land Registration (Scotland) Act 2010 (asp 00)”, and
 - (b) “each of those subsections” there is substituted “sub-paragraph (2) of that paragraph”.

NOTE

This paragraph replaces a reference to the 1979 Act with a reference to the equivalent provisions in the draft Bill. Section 16(2) of the 1979 Act has already been repealed.

Broadcasting Act 1996 (c.55)

- 36 In Schedule 5 to the Broadcasting Act 1996 (transfer schemes relating to BBC transmission network), in paragraph 4(4), for the words—
- (a) “subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979” there is substituted “sub-paragraphs (1) and (2) of paragraph 1 of schedule 7 to the Land Registration (Scotland) Act 2010 (asp 00)”, and
 - (b) “each of those subsections” there is substituted “sub-paragraph (2) of that paragraph”.

NOTE

This paragraph replaces a reference to the 1979 Act with a reference to the equivalent provisions in the draft Bill. Section 16(2) of the 1979 Act has already been repealed.

Petroleum Act 1998 (c.17)

- 37 In section 5(9) of the Petroleum Act 1998 (existing licences), after the word “subscribed” there is inserted “or authenticated”.

NOTE

This paragraph amends section 5(9) to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the draft Bill.

Transport Act 2000 (c.38)

- 38 (1) The Transport Act 2000 is amended as follows.
- (2) In paragraph 7(7)(c) of Schedule 2 (air traffic administration orders: schemes), for the words—
- (a) “subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979” there is substituted “sub-paragraphs (1) and (2) of paragraph 1 of schedule 7 to the Land Registration (Scotland) Act 2010 (asp 00)”, and
 - (b) “each of those subsections” there is substituted “sub-paragraph (2) of that paragraph”.
- (3) In paragraph 12(3) of Schedule 6 (transfer schemes), for the words—
- (a) “subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979” there is substituted “sub-paragraphs (1) and (2) of paragraph 1 of schedule 7 to the Land Registration (Scotland) Act 2010 (asp 00)”, and
 - (b) “each of those subsections” there is substituted “sub-paragraph (2) of that paragraph”.

NOTE

These paragraphs replace a reference to the 1979 Act with a reference to the equivalent provisions in the draft Bill. Section 16(2) of the 1979 Act has already been repealed.

Public Finance and Accountability (Scotland) Act 2000 (asp 1)

- 39 In section 9(1) of the Public Finance and Accountability (Scotland) Act 2000 (Keeper of the Registers of Scotland: financial arrangements), for the words “25 of the Land Registers (Scotland) Act 1868 (c.64)” there is substituted “90 of the Land Registration (Scotland) Act 2010 (asp 00)”.

NOTE

Section 25 of the 1868 Act is repealed and replaced by section 90 of the draft Bill. This paragraph makes the necessary consequential change.

Adults with Incapacity (Scotland) Act 2000 (asp 4)

- 40 (1) The Adults with Incapacity (Scotland) Act 2000 is amended as follows.
- (2) In each of sections 56(7) (registration of intervention order relating to heritable property) and 61(7) (registration of guardianship order relating to heritable property), for the words “the updated Land Certificate or an office copy thereof” there is substituted “an extract of the updated title sheet”.

- (3) In section 78(1)(b) (amendment of registration under section 61 of the Act on events affecting guardianship or death of adult)—
 - (a) for the word “recording” there is substituted “registration in the Land Register of Scotland, or as the case may be in the General Register of Sasines,”, and
 - (b) the words “or, as the case may be, the registering of the event or the death in the Land Register of Scotland” are repealed.

NOTE

Under the new scheme there will be no land certificates or office copies but only extracts. Subparagraph (2) makes the necessary changes to the sections mentioned.

Subparagraph (3) amends the provisions mentioned to take account of the repeal of the 1979 Act. In future it will not be possible to register an event or death directly in the Land Register. Registration will have to proceed on the basis of a deed such as an interlocutor.

Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)

- 41 (1) The Abolition of Feudal Tenure etc. (Scotland) Act 2000 is amended as follows.
 - (2) In section 18A(8)(b) (personal pre-emption burdens and personal redemption burdens), for the words “15(3) of the Land Registration (Scotland) Act 1979 (c.33)” there is substituted “68 of the Land Registration (Scotland) Act 2010 (asp00)”.
 - (3) In section 63(2) (baronies and other dignities and offices), for the words “an interest in land for the purposes of the Land Registration (Scotland) Act 1979 (c.33) or a right as respects which a deed can be” there is substituted “a right as respects which a deed can be registered in the Land Register of Scotland or”.
 - (4) In section 73 (feudal terms in enactments and documents: construction after abolition of feudal system)—
 - (a) in subsection (1)—
 - (i) the word “or” which immediately follows paragraph (c) is repealed, and
 - (ii) after paragraph (d) there is inserted “or
 - (e) in an extract or certified copy issued under section 70 of the Land Registration (Scotland) Act 2010 (asp 00),”, and
 - (b) in subsection (2)(b), for the words “subsection (1)(d)” there is substituted “paragraph (d) of, or extract or certified copy such as is mentioned in paragraph (e) of, subsection (1)”.

NOTE

Subparagraph (2) replaces the reference to the 1979 Act with a reference to the equivalent provision in the draft Bill.

Subparagraph (3) replaces the reference to interest in land with a reference to right in land. The amendment also reflects the fact that under the new scheme registration requires to proceed on the basis of a deed.

Subparagraph (4) amends section 73 so as to apply the translation provisions to extracts and certified copies issued under section 70 of the draft Bill.

Standards in Scotland's Schools etc. Act 2000 (asp 6)

- 42 In section 58(1) of the Standards in Scotland's Schools etc. Act 2000 (interpretation), in the definition of "land", for the words "interests in land (within the meaning of the Land Registration (Scotland) Act 1979 (c.33))" there is substituted "rights registered in the Land Register of Scotland".

NOTE

This paragraph replaces the references to interests in land, which is the language of the 1979 Act, with a reference to rights in land which is the language of the draft Bill.

National Parks (Scotland) Act 2000 (asp 10)

- 43 In section 15 of the National Parks (Scotland) Act 2000 (management agreements)—
- (a) in subsection (1), for the words "an interest" there is substituted "a right",
 - (b) for subsection (5) there is substituted—
 “(5) A management agreement which affects a right in land may be registered in the Land Register or recorded in the Register of Sasines, as the case may be.”, and
 - (c) subsection (10) is repealed.

NOTE

This paragraph replaces the references to interest in land, which is the language of the 1979 Act, with a reference to right in land which is the language of the draft Bill.

Housing (Scotland) Act 2001 (asp 10)

- 44 In each of sections 23(1)(b) (tenant's right to written tenancy agreement and information) and 24(3) (restriction on variation of tenancy) of the Housing (Scotland) Act 2001, after the word "subscribed" there is inserted "or authenticated".

NOTE

This paragraph amends the two sections mentioned to take account of the extension of the 1995 Act to documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the draft Bill.

Title Conditions (Scotland) Act 2003 (asp 9)

- 45 (1) The Title Conditions (Scotland) Act 2003 is amended as follows.
- (2) In section 41(b) (deed granted by holder of conservation burden without completing title), for the words "15(3) of the 1979 Act" there is substituted "68 of the Land Registration (Scotland) Act 2010 (asp00)".
 - (3) In section 60 (grant of deed where title not completed: requirements)—
 - (a) in subsection (1), for the words "15(3) of the 1979 Act" there is substituted "68 of the Land Registration (Scotland) Act 2010 (asp00)", and
 - (b) in subsection (2), the words "or with section 15(3) of the 1979 Act" are repealed.

- (4) In section 84(2) (extinction following offer to sell), after the words “section 2” there is inserted “or 9B”.
- (5) In section 122 (interpretation)—
 - (a) in subsection (1)—
 - (i) in the definition of “constitutive deed”, at the end there is added “and this definition is subject to subsection (4) below”,
 - (ii) in the definition of “title condition”, in paragraph (e)(i), for the words “assignment of recorded” there is substituted “assignments of registered or recorded”, and
 - (b) at the end there is added—

“(4) If title is completed in the manner provided for in section 4 or 4A of the Conveyancing (Scotland) Act 1924 (c.27) (completion of title) and a midcouple relevant to the title sets out the terms of a title condition (or of a prospective title condition), then for the purposes of this Act the midcouple and notice of title are conjointly the constitutive deed of the title condition.”.

NOTE

Subparagraphs (2) and (3) replace the reference to the 1979 Act with a reference to the equivalent provision of the draft Bill. Subparagraph (3) also makes a consequential amendment to section 60 following the repeal of section 15(3) of the 1979 Act.

Subparagraph (4) amends section 84(2) to take account of the extension of the 1995 Act to documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the draft Bill.

Subparagraph (5) makes clear that in the case of a notice of title if a title condition is set out in a midcouple then the midcouple and the notice of title together are to be treated as the constitutive deed.

Subparagraph (5) also makes a consequential change to take account of the new title of section 3 of the 1857 Act.

The Energy Act 2004 (c.20)

46 (1) The Energy Act 2004 is amended as follows.

- (2) In paragraph 6(7) of Schedule 5 (supplementary provisions about nuclear transfer schemes), for the words—
 - (a) “subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979 (c.33)” there is substituted “sub-paragraphs (1) and (2) of paragraph 1 of schedule 7 to the Land Registration (Scotland) Act 2010 (asp 00)”, and
 - (b) “each of those subsections” there is substituted “sub-paragraph (2) of that paragraph”.
- (3) In paragraph 7(7) of Schedule 21 (energy transfer schemes), for the words—
 - (a) “subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979 (c.33)” there is substituted “sub-paragraphs (1) and (2) of paragraph 1 of schedule 7 to the Land Registration (Scotland) Act 2010 (asp 00)”, and
 - (b) “each of those subsections” there is substituted “sub-paragraph (2) of that paragraph”.

NOTE

These paragraphs replace a reference to the 1979 Act with a reference to the equivalent provisions in the draft Bill. Section 16(2) of the 1979 Act has already been repealed.

Civil Partnership Act 2004 (c.33)

- 47 In section 112(9) of the Civil Partnership Act 2004 (transfer of tenancy), in the definition of—
- (a) “long lease”, for the words “28(1) of the Land Registration (Scotland) Act 1979 (c.33)” there is substituted “10(2) of the Land Registration (Scotland) Act 2010 (asp 00)”, and
 - (b) “tenant-at-will”, for the words “section 20(8) of that Act of 1979” there is substituted “paragraph 2(9) of schedule 7 to that Act of 2010”.

NOTE

This paragraph replaces the references to the 1979 Act with references to the equivalent provisions in the draft Bill.

Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (asp 10)

- 48 In section 16 of the Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (rights in roads or public places), for subsection (3) there is substituted—
- “(3) The powers conferred by this section shall constitute a real right.”.

NOTE

This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (3).

Tenements (Scotland) Act 2004 (asp 11)

- 49 (1) The Tenements (Scotland) Act 2004 is amended as follows.
- (2) In section 1(2)(b) (determination of boundaries and pertinents)—
 - (a) the words “an interest in” are repealed, and
 - (b) for the words “title sheet of that interest” there is substituted “relevant title sheet”.
 - (3) In paragraph 1(6) of schedule 3 (sale under section 22(3) or 23(1) of the Act), for head (a) there is substituted—
 - “(a) where the flat or former flat has been registered in the Land Register of Scotland, the description refers to the number of the title sheet;”.

NOTE

The 1979 Act referred to interests in land. The draft Bill does not use that concept. Subparagraphs (2) and (3) make the necessary consequential changes.

Companies Act 2006 (c.46)

- 50 (1) The Companies Act 2006 is amended as follows.
- (2) In section 48(3) (execution of documents by companies), after the word “subscribed” there is inserted “(or, in the case of an electronic document, authenticated)”.
 - (3) In section 49(4)(b), after the word “subscribed” there is inserted “or authenticated”.
 - (4) In section 1022(6) (protection of persons holding under a lease), for the words “1979 (c.33)” there is substituted “2010 (asp 00)”.

NOTE

Subparagraphs (2) and (3) amend the provisions mentioned to take account of the extension of the 1995 Act to documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the draft Bill.

Subparagraph (4) substitutes a reference to the 1979 Act with a reference to the draft Bill.

Housing (Scotland) Act 2006 (asp 1)

- 51 In section 84(2) of the Housing (Scotland) Act 2006 (registration of conditions), for the words “section 20(8) of the Land Registration (Scotland) Act 1979 (c.33)” there is substituted “paragraph 2(9) of schedule 7 to the Land Registration (Scotland) Act 2010 (asp 00)”.

NOTE

This paragraph replaces a reference to the 1979 Act with a reference to the equivalent provision in the draft Bill.

Edinburgh Airport Rail Link Act 2007 (asp 16)

- 52 In section 9(1) of the Edinburgh Airport Rail Link Act 2007 (registration of vested land), for the words “section 4 of the Land Registration (Scotland) Act 1979 (c.33)” there is substituted “Part 2 of the Land Registration (Scotland) Act 2010 (asp 00)”.

NOTE

This paragraph replaces a reference to the 1979 Act with a reference to the equivalent provisions in the draft Bill.

Airdrie-Bathgate Railway and Linked Improvements Act 2007 (asp 19)

- 53 In section 9(1) of the Airdrie-Bathgate Railway and Linked Improvements Act 2007 (registration of vested land), for the words “section 4 of the Land Registration (Scotland) Act 1979 (c.33)” there is substituted “Part 2 of the Land Registration (Scotland) Act 2010 (asp 00)”.

NOTE

This paragraph replaces a reference to the 1979 Act with a reference to the equivalent provisions in the draft Bill.

Energy Act 2008 (c.32)

54 In section 77(7) of the Energy Act 2008 (model clauses of petroleum licences), after the word “subscribed” there is inserted “or authenticated”.

NOTE

This paragraph amends section 77(2) to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form. See Part 34 of the Report and the note to schedule 5 of the Bill.

SCHEDULE 9
(introduced by section 98)

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
Land Registers (Scotland) Act 1868 (c.64)	Section 13. Section 19. Section 25.
Burgh Registers (Scotland) Act 1926 (c.50)	The whole Act.
Land Registration (Scotland) Act 1979 (c.33)	The whole Act.
Water (Scotland) Act 1980 (c.45)	Section 109(5).
Telecommunications Act 1984 (c.12)	In Schedule 4, paragraph 71.
Matrimonial and Family Proceedings Act 1984 (c.42)	In Schedule 1, paragraph 28.
Bankruptcy (Scotland) Act 1985 (c.66)	In Schedule 7, paragraph 15.
Requirements of Writing (Scotland) Act 1995 (c.7)	In section 12(1), the definition of “dealing”.
Land Registers (Scotland) Act 1995 (c.14)	The whole Act.
Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)	Section 4. Section 46. Section 65. Section 65A(12). In schedule 11, the words “section 3 of”.
Title Conditions (Scotland) Act 2003 (asp 9)	In each of sections 4(1), 71(1), 73(1)(b) and 75(2), the words “, notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.)”. Section 51. Section 58.

<i>Enactment</i>	<i>Extent of repeal</i>
	Section 119(2).
Edinburgh Tram (Line Two) Act 2006 (asp 6)	In section 25(5), the words “For the purposes of section 28 (interpretation) of the Land Registration (Scotland) Act 1979 (c.33),”; and “and shall be an overriding interest”.
Edinburgh Tram (Line One) Act 2006 (asp 7)	In section 25(5), the words “For the purposes of section 28 (interpretation) of the Land Registration (Scotland) Act 1979 (c.33),”; and “and shall be an overriding interest”.
Waverley Railway (Scotland) Act 2006 (asp 13)	In section 16(3), the words “For the purposes of section 28 (interpretation) of the Land Registration (Scotland) Act 1979 (c.33),”; and “and shall be an overriding interest”.
Glasgow Airport Rail Link Act 2007 (asp 1)	In section 15(3), the words “For the purposes of section 28 (interpretation) of the Land Registration (Scotland) Act 1979 (c.33),”; and “and shall be an overriding interest”.
Edinburgh Airport Rail Link Act 2007 (asp 16)	In section 20(6), the words “For the purposes of section 28 of the Land Registration (Scotland) Act 1979 (c.33),”; and “and shall be an overriding interest”.
Airdrie-Bathgate Railway and Linked Improvements Act 2007 (asp 19)	In section 20(6), the words “For the purposes of section 28 of the Land Registration (Scotland) Act 1979 (c.33),”; and “and shall be an overriding interest”.

NOTE

Land Registers (Scotland) Act 1868 (c.64)

Sections 13 and 25, which are about fees, are superseded by section 90 of the draft Bill.

Section 19, which is about official searchers, is spent.

Burgh Registers (Scotland) Act 1926 (c.50)

This Act is now spent.

Land Registration (Scotland) Act 1979 (c.33)

The 1979 Act is replaced by the draft Bill.

Water (Scotland) Act 1980

The relevant provisions have been amended to add a reference to registration in the Land Register of Scotland, hence this provision can be repealed. See the note to paragraph 23 of schedule 8.

Telecommunications Act 1984

This paragraph which amended the 1979 Act can be repealed following the repeal of that Act.

Matrimonial and Family Proceedings Act 1984 (c.42)

This paragraph which amended the 1979 Act can be repealed following the repeal of that Act.

Bankruptcy (Scotland) Act 1985 (c.66)

This paragraph which amended the 1979 Act can be repealed following the repeal of that Act.

Requirements of Writing (Scotland) Act 1995 (c.7)

The Requirements of Writing (Scotland) Act 1995 is extended by the draft Bill to cover electronic documents in general. This definition which is ARTL-specific is no longer necessary and so can be repealed.

Land Registers (Scotland) Act 1995 (c.14)

This Act made provision for pre-payment of fees in the Register of Sasines. The substance is re-enacted as section 90(6) of the draft Bill and so the Act can be repealed.

Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)

Section 4

This section which is about the transfer of ownership of land is replaced by section 80 of the draft Bill.

Section 46

This section allows a grace period running to Martinmas 2014 during which the Keeper's duty to rectify certain inaccuracies in relation to feudal real burdens is suspended. This is inconsistent with the Keeper's duty under the Bill to rectify inaccuracies on becoming aware of them and therefore the section should be repealed. In practical terms this will make little difference as it is unlikely that the draft Bill if implemented will in any event come into force much before Martinmas 2014.

Section 65

This section which is about proper liferents is replaced by section 81 of the draft Bill.

Section 65A(12)

This provision applied section 46 of the 2000 Act to sporting rights which have been extinguished by the Act. It can be repealed following the repeal of section 46.

Schedule 11

The reference is removed in consequence of the extension of the Requirements of Writing (Scotland) Act 1995 to electronic documents. The deed will still require to be executed in accordance with the 1995 Act.

Title Conditions (Scotland) Act 2003 (asp 9)

The first set of repeals removes from the sections mentioned a reference to the 1979 Act which is now obsolete.

Section 51

This section allows a grace period running to Martinmas 2014 during which the Keeper's duty to rectify certain inaccuracies relating to real burdens is suspended. This is inconsistent with the Keeper's duty under the Bill to rectify inaccuracies on becoming aware of them and therefore the section should be repealed. In practical terms this will make little difference as it is unlikely that the draft Bill if implemented will in any event come into force much before Martinmas 2014.

Section 58

This section is replaced by section 79 of the draft Bill.

Section 119(2)

This provision which refers to section 3(1) of the 1979 Act can be repealed following the repeal of the 1979 Act.

Edinburgh Tram (Line Two) Act 2006 (asp 6)

The references to the 1979 Act can be repealed following the repeal of that Act.

Edinburgh Tram (Line One) Act 2006 (asp 7)

The references to the 1979 Act can be repealed following the repeal of that Act.

Waverley Railway (Scotland) Act 2006 (asp 13)

The references to the 1979 Act can be repealed following the repeal of that Act.

Glasgow Airport Rail Link Act 2007 (asp 1)

The references to the 1979 Act can be repealed following the repeal of that Act.

Edinburgh Airport Rail Link Act 2007 (asp 16)

The references to the 1979 Act can be repealed following the repeal of that Act.

Airdrie-Bathgate Railway and Linked Improvements Act 2007 (asp 19)

The references to the 1979 Act can be repealed following the repeal of that Act.

Appendix B

**List of those who submitted written comments on
Discussion Papers No 125, No 128 and No 130**

List of those who submitted written comments on Discussion Paper No 125

R G Anderson
B Chrystal, Director, First Title Legal (Scotland) Limited, Underwriting Director,
First Title Insurance plc
Professor E J Cooke, University of Reading
Professor W M Gordon, University of Glasgow
Keeper of the Registers of Scotland
Law Society of Scotland
A MacKinlay
A S Menzies, Solicitor
D B Reid, Solicitor
D I S Reid, Solicitor
Scottish Law Agents Society
Society of Writers to HM Signet²
Dr A J M Steven, University of Edinburgh
M Sethu

List of those who submitted written comments on Discussion Paper No 128

Professor W M Gordon, University of Glasgow
B G Hamilton
Faculty of Advocates
Keeper of the Registers of Scotland
Law Society of Scotland (with dissenting submissions by D B Reid, solicitor)
A MacKinlay
Ordnance Survey
Dr M M Park
Scottish Law Agents Society
Semple Fraser
Dr A J M Steven, University of Edinburgh

List of those who submitted written comments on Discussion Paper No 130

Crown Estate Solicitor (Scotland)
S J Cumming, Solicitor
Faculty of Advocates
Professor W M Gordon, University of Glasgow
Judges of the Court of Session
Keeper of the Registers of Scotland
Law Society of Scotland
Ordnance Survey
Professor C T Reid, University of Dundee
Professor R Rennie, University of Glasgow
Scottish Law Agents Society
R W Wishart, Solicitor
Professor I P Williamson with Dr M M Park, University of Melbourne

² The response was written on behalf of the Society by M P G Smith, J D Sinclair and J B Stirling, Clerk to the Society.

Appendix C

BiGGAR Economics

Economic Impact Assessment of the Draft Land Registration (Scotland) Bill

A report to Registers of Scotland

BiGGAR Economics

**Economic Impact Assessment of the Draft
Land Registration (Scotland) Bill**

A report to
Registers of Scotland

23rd October 2009

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1 INTRODUCTION

1.1 Study Objectives

The Scottish Law Commission (the Commission) is presently reviewing the system of land registration introduced by the Land Registration (Scotland) Act 1979 in a law reform project initiated at the suggestion of Registers of Scotland (RoS), the non-Ministerial Government Department responsible for maintaining the Land Register.

According to its Annual Report for 2008 (Scot Law Com No.214) the aims of the project are “to enhance the technical functionality of the system; to improve the fit between registration law and general property law; to remove certain practical difficulties arising from the current legislation; to clarify matters that are obscure in that legislation; and to overhaul existing property statutes to make them e-compatible.”

The Commission’s recommendations will be contained in a report incorporating a draft Bill which would implement those recommendations. The Commission’s project is now close to completion and it is anticipated that the report will be submitted to Scottish Ministers toward the end of 2009 and thereafter laid before the Scottish Parliament.

BiGGAR Economics Limited had recently completed a study of the economic impacts of RoS¹ and in July 2009, RoS with agreement of the Commission asked BiGGAR Economics to undertake a more specific study of the potential impacts of the reforms proposed in the draft Bill.

The objective of the study has been to determine the financial and economic implications of the Bill for RoS and for major stakeholder groups such as conveyancing solicitors, mortgage lenders and the general public.

The assessment undertaken has included an economic audit of the proposed legislation to determine whether it could negatively affect the economy and an assessment of any potential positive economic impacts that might result from implementation of the proposals. As well as providing information and insights to RoS, it is hoped that this report on the outcomes of the study will be of assistance to Scottish Ministers, Members of the Scottish Parliament and others who require to consider enacting the Commission’s proposed reforms. The study also provides groundwork for the Financial Memorandum which would accompany the Bill if it is introduced into the Scottish Parliament.

1.2 Report Structure

The remainder of this report is structured as follows:

- this section introduces the Land Registration system in Scotland and outlines the key changes envisaged in the draft Bill;
- section 2, outlines the market context surrounding the draft Bill, a discussion of the economic importance of secure land rights and registration and the impact of the current Scottish system of land registration;

¹ Published at <http://www.ros.gov.uk/public/publications/reports.html>

- section 3 introduces the impacts of the draft Bill;
- section 4 outlines the potential costs that might be associated with implementation of changes proposed in the draft Bill;
- section 5 outlines the potential economic benefits of the changes;
- section 6 focuses on the economic impact of the changes on transaction costs in property and finance markets;
- section 7 summaries the total economic impact; and
- section 8 summarises the main findings of the study and presents its conclusions.

1.3 The Land Registration System in Scotland

The registration of property rights in Scotland is undertaken by RoS, a non Ministerial Department headed by the Keeper of the Registers of Scotland (the Keeper) who is responsible for maintaining and compiling 16 public registers. The work of RoS is dominated by its two main registers that relate to rights in land: the Land Register and the General Register of Sasines.

1.3.1 The General Register of Sasines

Established in 1617, this Register was the mainstay of the Scottish system of land ownership until 1979 when the Land Register was introduced.

1.3.2 The Land Register

The Land Register of Scotland was brought in by the Land Registration (Scotland) Act 1979 and the first registrations took place in 1981. The Land Register is a map-based system which records property ownership and other long-term rights in property. The Land Register is a register of property titles rather than deeds. First registration in the Land Register involves a one-off examination of title deeds, from which a title sheet is created. In most cases, the title is indemnified by the Keeper (a form of State guarantee of title). The title sheet defines the property extent on the current version of the Ordnance Map and gives details of price, current owners, securities over the property (e.g. a mortgage), and title conditions affecting the property. Properties are being continuously transferred from the Register of Sasines to the Land Register as they are sold, market transaction being the primary trigger for first registration. Approximately 55% of property titles in Scotland (although less than 20% of the land mass) have already been transferred to the Land Register.

1.4 The Draft Land Registration (Scotland) Bill

The draft Land Registration (Scotland) Bill will allow for the continuation of the Land Register but is intended to replace the current Land Registration (Scotland) Act 1979 with a new legislative basis for the system of land registration in Scotland.

The Bill will strengthen the legislative foundations of the current system; many of its provisions are concerned with continuing satisfactory aspects of the system as currently operated in practice and placing these on a sound statutory footing. The

main changes proposed are outlined below, listed in the order they appear in the draft Bill:

- cadastral map – a reformation of the Land Register’s digital mapping capability, requiring all property extents and registered rights in land in Scotland to be mapped;
- archive record – a comprehensive electronic store of copies of historic and current deeds and documents submitted to the Keeper in support of Land Register applications, becoming an official part of the public register with improved searchability;
- shared plot titles – a new method of providing clarity and certainty of ownership where land is owned in common by several people;
- registration – greater clarity and certainty regarding the duties and responsibilities of the Keeper, applicants and others, changing the effect of registration so that administrative error or error induced by forgery does not of itself deprive the true proprietor of his or her rights;
- one-shot rule – a new rule, and an efficiency measure, requiring applicants to get their applications correct first time and preventing build-ups of incomplete or defective applications;
- time limits – the setting of binding targets for the processing of applications;
- prescriptive claimants – a clear statutory solution to the problem of ownerless or abandoned property, which can then be put to economic use;
- Keeper’s warranty – improvements to the existing scheme of monetary compensation for the registered holders of property rights (if their registered titles are inaccurate and they suffer loss), including simplified, clearer rules about quantification of claims and the elimination of ‘windfall’ payments;
- integrity principle – a new principle giving buyers of property guaranteed ownership and realigning legal ownership with moral/societal expectations;
- advance notices – new protection for acquirers of land and mortgage lenders, prior to registration of their rights, against the risk of competing or adverse registrations and events;
- completion of the Land Register – allowing for Keeper-induced registration and new triggers to close the Sasine Register and speed up the building of a comprehensive Land Register; and
- e-enablement – provision for missives and conveyancing deeds to be in electronic form, allowing for more efficient interaction between solicitors and more efficient input of information into the registers.

2 ECONOMIC CONTEXT AND CURRENT IMPACTS

This section discusses the economic context of the markets which the draft Bill is expected to affect and the importance of land rights and registration to the whole economy. The economic impact of the current Scottish system will then be summarised.

2.1 Economic Importance of Secure Land Rights and Registration

Property rights in general, and land and property rights in particular, are of fundamental importance to the market economy. As The Economist puts it:

“Property rights: Essential to any market economy. To trade, it is essential to know that the person selling a good or service owns it and that ownership will pass to the buyer. The stronger and clearer property rights are, the more likely it is that trade will take place and that prices will be efficient. If there are no property rights over something there can be severe consequences.”²

The importance of property rights is well recognised in development economics and the problems of weak property rights were seen in Eastern Europe as the communist system came to an end. Without a methodical property rights system which is enshrined by the law and enforced by concrete institutions, economic development will be severely hindered. Again, from The Economist:

“Private property rights are often more economically efficient than common ownership. When people do not own something directly, they may have little incentive to look after it. Strikingly, in Russia after communism, the establishment of a well-functioning market economy proved difficult, partly because it was unclear who owned many of the country’s resources, and those property rights that did exist often counted for little. Businesses would often have their products stolen by criminal gangs or be forced to hand over most of their profits in protection money. It is no coincidence that an effective judicial system, as well as property rights for it to enforce, is a feature of all advanced market economies.”³

Security of ownership is fundamental, the greater certainty an investor has over ownership in land the less risk he will take in developing that land, in finding a buyer for it and in turn undertaking a transaction to buy land from another party. The greater the certainty regarding market transactions and institutions, the political system and governance, and the availability of jobs, the stronger a state will be and the confidence of citizens in the outcome of the state’s actions.

Any change to such a fundamental economic building block can potentially have far reaching consequences for the rest of the economy and for community stability. The characteristics which strong registration systems tend to embody are:

- the accuracy and reliability of information;
- transparency;
- credibility and trustworthiness;

² “Economics A-Z” at www.economist.com

³ “Economics A-Z” at www.economist.com

- accessibility;
- efficiency; and
- innovation.

The stronger these traits are upheld within a system, the stronger that system tends to be.

2.2 Market Context

RoS handled over half a million registration transactions in 2007/08 and over 400,000 in 2008/09. The value of the property transfers that it registered was more than £35 billion in 2007/08 and more than £20 billion in 2008/09 with further transactions in excess of £21.5 billion in 2007/08 and £14.3 billion in 2008/09 relating to securities for re-mortgaging and second charges. These transactions are covered by RoS's indemnity guarantee. It also undertook a further £4.6 billion of transactions in 2007/08 and £3.1 billion for 2008/09 in the Register of Sasines.

On average over a six year period up until 2008/09 there were 5,286 commercial property transactions and 135,443 residential transactions. Approximately one-third of all transactions relate to a transfer of title (i.e. a change of ownership). Of these, in 2007/08 51,723 were First Registrations, 23,668 were Transfers of Part and 331,358 Dealings with Whole. In 2008/09 there were 43,314 First Registrations, 25,888 Transfers of Part and 69,435 Transfers of Title.

The existence of secure and reliable property rights is fundamental to the workings of the property investment market. Investment decisions are influenced by potential yield, the cost of investment and the risk attached to either of these.

The relationship between risk and investment is clear although complex to quantify, with less security resulting in a higher risk investment. A number of factors influence security of investment, including:

- the efficiency and effectiveness of the registration system;
- the effectiveness of the legal system; and
- the level of political stability.

Having an efficient registration system guarantees security to the investor, reduces disputes and litigation, and leads to improved services by lawyers and property professionals by minimising the resources necessary for investigation of property rights and charges.

2.2.1 Mortgage and Re-mortgage Markets

The land registration system has a direct impact on the mortgage and re-mortgage market because it provides lenders with the means of securing their mortgage rights over a property. According to the Council of Mortgage Lenders, the total value of lending in Scotland in 2008 was £11.7 billion⁴. In addition, there are commercial borrowings secured against property holdings and secured non-mortgage loans.

⁴ The figures on the value of transactions from the Council of Mortgage Lenders (CML) suggest a lower total than RoS numbers. This is to be expected since, while CML represents the majority of domestic mortgage providers, not all commercial lenders are members.

Without the land registration system, the security held against these loans would be far less secure, increasing the risk to lenders. Increased risk to lenders would mean increased costs to borrowers in terms of higher interest rates.

In addition, the security of the land registration system is important to lenders because it impacts upon the capital weighting allocated to the mortgage. If the security is not fully effective, then the lender would need to allocate more capital to the mortgage, and the costs to the lender and borrower would be greater. A weaker land registration system in Scotland would, therefore, have the effect of reducing the level of lending and the capital available for investment in the Scottish economy.

To give an indication of the current market situation there were 11,400 loans for house purchase in the second quarter of 2009 in Scotland, a 50% rise from the first three months of the year but 39% fewer than we saw in the same period last year. The increase was evenly spread between first-time buyers and movers.

However, re-mortgaging declined. There were 9,000 loans for re-mortgaging in Scotland in the second quarter of 2009, worth £900 million, compared with 11,000, worth £1.6 billion, in the first three months of the year. Re-mortgaging activity remains subdued, compared to recent years. Many borrowers coming to the end of an existing mortgage deal are choosing to revert to their existing lender's standard variable rate.

2.2.2 Conveyancing

Almost every land transaction in Scotland is undertaken by a conveyancing solicitor on behalf of a client. Registration fees are part of the transaction costs associated with buying property and of re-mortgaging or borrowing secured by property.

The legal services market in Scotland is estimated to have a turnover of around £1 billion per annum⁵. The Scottish Government introduced a Legal Services Bill in the 2009-10 session of the Scottish Parliament which aims to open this market up to competition and provide opportunities for it to grow. If enacted the Bill will:

- allow solicitors to secure external investment and business expertise and to combine with other professionals to offer legal services in new ways;
- remove restrictions on solicitors entering into business relationships with non-solicitors;
- allow Scottish commercial law firms to compete effectively with other UK firms both in international markets and the Scottish market; and
- create a robust regulatory framework in which the Scottish Government will appoint approved regulators who will regulate the new business structures.

Large scale changes are occurring in the conveyancing market with some firms investing in technology and process re-engineering to deliver significant cost savings. With the changes to the market being introduced by the Legal Services Bill it seems likely that the practices that invest and have the flexibility to adapt to the new competitive environment will be the ones that are the likeliest to survive and prosper.

⁵ This is based on aggregate fee income of almost £990 million earned by solicitors and advocates in private practice in Scotland in 2004 (6,859 solicitors and 470 advocates).

The changes proposed in the draft Bill, in particular those associated with e-enablement, will facilitate further innovation in the conveyancing market, which is likely to bring further competitive downward pressure on conveyancing fees. This is considered further in the next section.

2.3 Existing Economic Impacts

A study undertaken to assess the current economic contribution of RoS to the Scottish economy found the existing system of registering property rights to have the following key impacts:

- RoS has direct (turnover and employment), indirect (by purchasing supplies from Scottish businesses) and induced (RoS staff spending wages) impacts on the Scottish economy, providing 1,997 jobs and a Gross Value Added (GVA) of £85.8 million per annum;
- clarity of ownership in the current system is a vital tool in preventing disputes arising over the title or extent of ownership reducing property-based litigation. The greater the clarity of ownership, the greater the certainty and security in the market. The reduction in each of these areas has been calculated as £12.6 million as a result of the registration system currently employed in Scotland;
- another important impact of providing clarity of ownership is in the greater efficiency it facilitates within Scotland's property based local taxation system. Our analysis suggests that without RoS the non-collection of Council Tax could equate to £91 million (for financial year 2007-08);
- impacts will also arise if RoS implements a National Property Ownership Service utilising the information already held⁶. These will include preventing Housing Benefit overpayments (worth £2.2 million in the first year rising to £9.6 million in year five) and other benefits to local authorities (which could result in an estimated impact of £4.1 million in the first year rising to £25.5 million by year 5); and
- there is a range of wider economic benefits for Scotland delivered by RoS, not just because of its role in clarifying property ownership, but from its other areas of activity. These include the provision of information-based services to various stakeholders, its advice to developing countries on building and establishing a system of property rights, and providing records which support Scotland's growing genealogy tourism market.

In addition to these examples of key impacts of the current system, the RoS economic impact study also compared the Scottish land registration system (with its State-backed indemnity) to the (private) title insurance based system operating in California.

The differences in the cost of conveyance between California and Scotland were compared then the average cost in each system was multiplied by the average total number of property transactions in Scotland per annum over a four year

⁶ Councils have access to both the Land Register and Register of Sasines so can access all the property information held by RoS. However, in practice it is the ease of accessing the information on the Land Register which delivers almost all of the benefit, as Councils are more likely to use this information.

period. The difference between the total conveyance cost that would be charged under both systems is the saving made by the Scottish system.

To outline the calculation in greater detail, the average conveyancing cost of property in Scotland is £686⁷, multiplied by property transactions in Scotland (156,289 per annum), equals £107 million. In California the average cost of conveyance is £1,583⁸ per transaction – multiplying this by the average number of annual property transactions in Scotland equals £247 million⁹.

On this basis, it is estimated that there is a total saving of £140 million per annum (£247 million minus £107 million) that would otherwise have to be met through a private insurance-based title protection system.

The additional impacts, which will follow from the proposed changes to the system, are presented in the following chapters.

⁷ Sources; Registers of Scotland and Mortgages Quote Online.

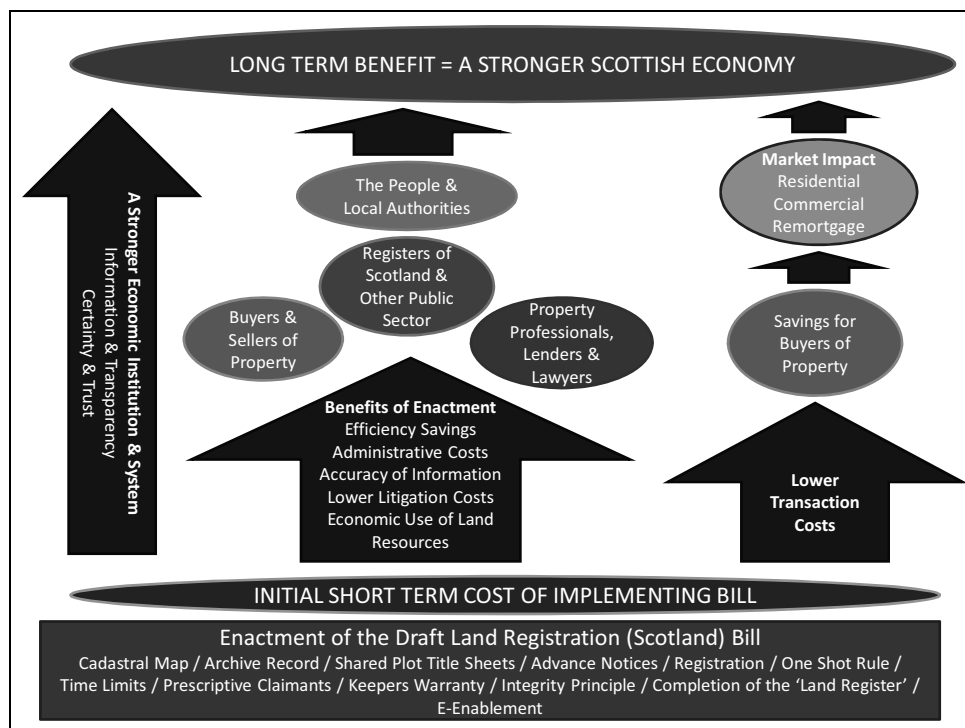
⁸ California Department of Insurance.

⁹ The cost of conveyance per transaction and the total number of transactions in the calculation took account of differences in the values of property; the averages presented here are a simplification for the purpose of understanding.

3 IMPACTS OF THE BILL

This section considers the impacts that might be associated with the draft Bill. As the figure below shows, the Bill will have a macro effect associated with the strengthening of the land registration system and a number of micro effects on RoS, buyers and sellers of property, communities and property professionals such as conveyancing solicitors and lenders.

Figure 3-1 – Draft Land Registration (Scotland) Bill and a Stronger Scottish Economy



3.1 Legislative Basis and Credibility of Land Registration System

The current land registration system is based mainly on the Land Registration (Scotland) Act 1979, although the provision for RoS funding its operations from registration fees is rooted in 19th century legislation. The 1979 Act is probably the shortest land registration statute in the world and its brevity has caused uncertainty in several areas surrounding property rights. This uncertainty has led to disputes in law and a number of cases that have challenged aspects of the operation of the land registration system in Scotland.

In the vast majority of land registration cases the current system works well. Indeed RoS has been close to or met its target of 98.5% accuracy. So while the risk of the system as a whole being undermined seems small, the impact of a loss of confidence would be substantial. The system underpins a property market with a total transaction value estimated at £35 billion in 2007/08 and a further £22 billion associated with financing and re-mortgaging.

If the system was undermined its reputation would be damaged which could lead to market agents losing confidence and trust in it. These two commodities – trust

and confidence – are hard won by public institutions and easily reversible, so are very valuable. Perception and belief shape a country's economy and society; changes in these can have dramatic effects.

With a loss of market confidence there is an implied loss of certainty and stability, which are hallmarks of a strong economy. Numerous examples of the importance of confidence and the role of expectations regarding the future can be seen in market and stock market crashes.

The further risk to the reputation of the system and public confidence in it is associated with how disputes are settled and the operation of the indemnity system. Even a small number of cases where the outcome seems to be unfair or unjust could bring the operation of the system as a whole into question.

In the current system, there is tension (and potential for conflict) between property law and registration law. When a property dispute occurs, possession, even for an instant, is crucial to the legal position relative to the question of who should retain ownership and who should be compensated financially. Someone who might be recognised as an owner by property law could end up losing his or her rights to a property to someone else who is, under registration law, the registered owner in possession of the property. This can even occur when there has been a mistake in the registration process. While the true owner may receive compensation from RoS's indemnity scheme, the loss of property rights can seem unjust.

The draft Bill proposes to substantially re-align registration law with property law. A new approach to guaranteeing title, the 'integrity principle', will ensure that in such disputes, the party which has the moral and social case for the property will (in the majority of instances) be granted the right of ownership to that property. This change will reduce the small number of cases that might bring the system as a whole into disrepute.

By setting out every function of the Land Register, in a thoroughgoing way that the Land Registration (Scotland) Act 1979 failed to achieve, the draft Bill also resolves the wider issue of doubt about much of Land Register procedure and practice. The system will rely much less on the policies and practices developed over time by the Keeper and more on the legislation that governs its operation. This will increase the certainty in the system as a whole.

The draft Bill will ensure certainty and trust remain at the foundation of the system of land registration.

4 COSTS ASSOCIATED WITH CHANGES

As well as strengthening the foundations of the land registration system, the draft Bill proposes a number of changes. As with any change to any system, there are likely to be short term costs involved in introducing the reforms. These short term costs will be to:

- RoS; and
- conveyancing solicitors and their clients.

Ultimately, any additional costs are likely to be met by domestic and commercial buyers of property and those re-mortgaging properties or re-financing investments since RoS's income comes from registration fees and any increases in costs are likely to be passed on to customers.

The costs are mainly short terms costs associated with investing in new systems and the training that will be required to understand and adapt to the changes introduced. RoS and the conveyancing profession have been working on the assumption that any changes proposed by the draft Bill are unlikely to take effect before 2014 (i.e. five years from the time that this economic impact assessment has been undertaken). The detailed work that will be required to plan for and cost the investment in systems and training that will be required has, therefore, not yet been undertaken. The estimates in this section are therefore early, broad estimates of the scale of costs that might be incurred.

4.1 Land Register Completion Costs

The draft Bill will allow Scottish Ministers, in consultation with the Keeper, to choose from a range of additional "triggers" (i.e., events inducing registration) that will accelerate the completion of the Land Register. There is also provision for "Keeper-induced" registrations, at the Keeper's discretion, without cost to property owners. Until decisions about realising these possibilities are made, the area of greatest potential cost is difficult to quantify. However, it remains possible to make some general observations about costs.

Around 55% of property titles have already been transferred to the Land Register (although less than 20% of the land mass since many larger property titles in public and private ownership, such as land owned by the Crown and large private estates have not yet been transferred). The Land Register was introduced on a county-by-county basis so there is great variation across Scotland in the proportion of titles transferred. The range is from around 80% in Renfrewshire (which started in 1981, the first county where the Land Register was introduced) to around 20% in Inverness-shire (one of the last counties to be added).

RoS has made an initial, provisional estimate of the costs of completing the Land Register, based on current practices, of almost £400 million. To put this in some context, the turnover of RoS in 2007/08 was just under £73 million and in 2008/09 it was around £59 million.

At this stage this is a very broad estimate. There remains uncertainty surrounding this estimate and further work will be done on costs. For example, it is possible that many of the titles left on the Register of Sasines are complex and therefore would take more time and therefore cost to transact while the cost of Keeper-

induced registrations might be expected to be lower since there would be no need to communicate with a customer.

In addition a number of practical issues would need to be considered if a business case for completing the Land Register was to be prepared. This would need to consider issues such as requirements to invest in IT and any other systems development that might increase the efficiency of the process and the staffing and training requirements. A First Registration on the Land Register (transferring a property from Sasines to Land Register) requires staff with more knowledge and experience than a Dealing with a title already on the Land Register. Staff undertaking First Registrations are typically one to three grades higher and require at least two years to train compared with staff employed on Dealings.

These costs are not additional in any way since they will be incurred eventually, even if the Land Register is completed at the current rate of progress. However, if a decision was taken to accelerate the completion of the Land Register, some or all of this cost would be brought forward. Who would meet that cost would depend on how many of the registrations were voluntary (for which the customer applying for registration can be charged fees) and how many were Keeper-induced (potentially at the Keeper's expense).

4.2 RoS Systems and Training Costs

The introduction of the new legislation would require staff training at RoS, which would need to cover:

- an introduction to the new legislative basis for RoS's work; and
- the changes introduced by the new legislation, including the new systems required to realise the changes.

A full training needs assessment would be required to determine which staff required which training. However, an initial estimate can be made based on current RoS staff costs. In 2007/08 and 2008/09, RoS staff costs amounted to £40 million. On this basis, one week's training for each member of staff would have an opportunity cost of around £1 million, allowing for training being delivered internally by RoS staff. An average of two weeks training per member of staff could, therefore, have a cost in the order of £2 million. To put this in context, RoS has spent an average of £525,507 per annum over a six year period on staff training and development.

The draft Bill introduces a number of changes that will require some investment in new systems. These include the Advance Notices proposals and Shared Plot Titles. The costs of such systems have not yet been estimated and, given that there are a wide range of approaches to realising the draft Bill's requirements, it is difficult to provide such estimates at this stage.

However, to provide an idea of the scale of the extra investment in IT that may be required to implement the system of Advance Notices has been provisionally estimated at £1 million. On average over the five years up until 2007/08 IT services have cost RoS £6.6 million per annum, this cost having risen steadily from £2.5 million in 2003/04 to £8.2 million in 2007/08. The provisional estimate for the IT cost of implementing Advanced Notices is, therefore, 12.5% of the annual IT cost of RoS.

It should be noted that these costs are short-term costs associated with the introduction of new systems. Good practice in the introduction of such new systems should help to deliver cost savings in the longer term.

4.3 Conveyancing Costs

As with RoS, any changes will require investment in understanding the new legislation and in new systems and case management approaches by conveyancing solicitors.

There is a cost of training for both solicitors and support staff to ensure they are familiar with and able to practice within the new legislation. All solicitors holding a practicing certificate in Scotland are required to complete 20 hours (which includes 5 hours of private study) of continuing professional development (CPD) training within a year.

The cost of this CPD will depend on how it is undertaken and procured. Based on the cost of the Professional Competence Course, at £18.50 per hour, 20 hours of CPD would cost £370. There are 10,082 solicitors registered with the Law Society, including 6,859 in private practice. If 50% of those in private practice used one year's CPD to undertake activities associated with the new legislation and associated new systems, the total training costs might be £1.3 million. If the costs of training support staff were also included, this might increase to £2 million.

There will also be opportunity costs associated with this time spent training. Based on the Law Society's estimate of an hourly cost for a solicitor's time of £146.28¹⁰ the opportunity costs of 20 hours of solicitors CPD for 50% of solicitors in private practice would be £10 million.

The total estimated one-off cost of training associated with becoming familiar with the new legislation and systems could therefore be £12 million. However, it should be noted that such a cost would not be additional, since solicitors are required to spend time on CPD.

Case management systems are designed to improve the quality of the service offered to clients, manage time more effectively (for example when communicating with clients), improve organisation of cases and staff time spent on each, reduce administrative / transaction costs and errors. Ultimately these systems aim to increase productivity and improve the service offered.

The Bill could encourage the further adoption of such systems, especially with the advent of electronic conveyancing. These systems typically have installation and set-up costs (of perhaps £2,000 to £3,000) and then a small variable cost per transaction, which is generally passed onto the client. Approximately 10% of the market have these systems already in use, the cost to the remaining 90% of conveyancing firms (estimated to be 860 in Scotland) of installing a case management system would amount to an estimated £1.5 to £2.5 million.

While the new legislation might encourage the take-up of such systems, for example, to take advantage of the opportunities for efficiency savings associated with e-enablement, they are not additional costs. The significant changes taking place in the conveyancing market, rather than the new legislation are the key drivers for such investment since firms will be required to invest to deliver the cost savings required to remain competitive.

¹⁰ "Benchmarks and Cost of Time; the 2008 Survey of Legal Practices in Scotland", Law Society of Scotland, March 2009.

5 BENEFITS ASSOCIATED WITH CHANGES

This section discusses a number of benefits and cost savings that might be associated with the changes proposed by the draft Bill. The most significant positive impacts will be those that lead to transaction cost savings. Such cost savings and their impact are discussed at the end of this section.

5.1 Completion of the Land Register

While the costs associated with completion of the Land Register are likely to be significant, there is also potential for cost savings to RoS when the work has been completed.

Further work is required to cost out fully the potential savings that might be achieved and this would be required as part of any business case to invest in the completion of the Land Register. However, it is possible to estimate the potential scale of savings by considering the difference in costs between a First Registration or a Transfer of Part and a Dealing where a property is already on the Land Register.

A First Registration might take, on average, one day to complete while a Transfer of Part might take half of a day and Dealing with Whole might take one twelfth of a day. In 2007/08 there were 51,723 First Registrations and in 2008/09 there were 43,314 First Registrations. If these had been Transfers of Part or Dealings relating to titles already on the Land Register, this could deliver staff time savings in the range of 35,000 days (based on 2008/09 data) to 46,000 days (based on 2007/008 data).

This is equivalent to 12% to 17% of RoS staff time. Based on staff costs of around £40 million, this would be equivalent to a cost saving in the range of £4.6 million to £6.5 million per year. The average saving in this range is £5.6 million.

This is probably an underestimate of the true potential savings since it does not allow for the higher costs of staff that undertake the First Registrations (typically one to three grades higher than those undertaking Transfers of Part or Dealings). More importantly, the completion of the Land Register would facilitate investment in new systems and automated procedures that could deliver efficiencies when compared to current practices.

5.2 Disputes

The draft Bill will strengthen the legislative basis of the current land registration system and so remove many of the uncertainties associated with the current system. It would therefore be reasonable to assume that the number of disputes would decrease.

Two new cases occur, on average, every month with around 50 on-going cases at any time. Of these 50, RoS is likely to be involved actively in half with the other half being disputes over the 'facts' concerning ownership; in these RoS monitors progress and only rarely gets directly involved.

The majority of litigation cases before the Lands Tribunal do not go the full way and are usually settled. The claimant may typically spend in the region of £5,000 to £10,000 in legal fees (and RoS £4,000 to £5,000). If the outcome of the case requires the claimant to be compensated by RoS then the compensation includes

their legal expenses. However, if the claimant goes on with case and loses then they may be required to reimburse RoS's legal costs.

The table below illustrates the cost of such disputes to RoS or the claimant.

Table 5.1 – Cost of Disputes per instance in Scotland

	Per instance	Per month
Average Cost of Litigation – claimant* (£)	5,000 – 10,000	500 – 1,000
Average Cost of Litigation – RoS** (£)	4,000 – 5,000	400 – 500
Cost of Disputes (£) (Average Value of property)*		153,623

Source: *Registers of Scotland, **BiGGAR Economics assumption based on RoS data

Through changing the law underpinning the registration system leading to certainty on who owns property, the draft Bill should lead to many fewer disputes.

As described at 3.1 above, the realignment of registration and property law, the new “integrity principle” proposed in the draft Bill will ensure that disputes about ownership of property are no longer affected by underlying tensions between property law and registration law. This is expected to provide much greater certainty about the ownership rights of property in Scotland. As a result, fewer property disputes should arise.

The saving associated with this has been estimated by multiplying the average number of cases at any one time with the appropriate cost of litigation. Based on a total of 50 cases at any one time (of which half, 25, RoS will usually be involved in) and average monthly cost of £450 for RoS and £750 for other parties, increased certainty about property rights could lead to a saving of £810,000 per annum in litigation costs in Scotland.

5.3 Keeper’s Warranty

The main change to the indemnity system that currently operates is the “integrity principle”, which will bring registration law into line with property law and ensure that those securing ownership in a dispute are more likely to be those considered by society to be the “true” owners. This change is mainly about increasing fairness and justice rather than generating economic impact.

However, there are also proposed changes that will simplify the indemnity scheme and provide clarity on the rules of the scheme. These changes are expected to lead to marginal reductions in indemnity payouts rather than any significant changes.

There are currently around 100 claims paid out from the Keeper’s indemnity scheme each year, at an average cost of £4,000, giving a total annual cost of £400,000 (although this figure is expected to increase as more properties transfer on to the Land Register and so more cases come to light). However, it has been assumed that the changes proposed by the draft Bill would deliver annual savings of 10% of indemnity costs.

5.4 Advance Notices

In the Scottish conveyancing system, prior to settlement of a transaction, the purchaser’s solicitor examines a report from the Keeper’s registers to ensure that

the seller is able to give good title and that the title is not subject to any unwelcome encumbrances. Thereafter settlement takes place, with the purchaser's solicitor exchanging payment of the agreed price for the signed disposition (transfer deed) which is handed over by the seller's solicitor. Thereafter, after attending to matters such as Stamp Duty Land Tax certification, the purchaser's solicitor sends the disposition on to the Keeper for registration. Provided that the deed has been validly drawn up and signed, the law is that ownership transfers from seller to buyer on the day on which it is received by the Keeper. In practice there is always some elapse of time between the date to which the pre-settlement report was certified accurate and the date on which the disposition reaches the Keeper. Even making full use of electronic communication, this gap cannot be reduced to less than a day. In transactions carried out on paper the gap commonly extends to a fortnight or more.

This gap in time between the date of report and the date of registration presents potential risks, including the risk of fraud. For example, a fraudster could agree a sale of a property that is apparently free of mortgages but then (fraudulently) take out a mortgage on that property, before the deed transferring ownership to the purchaser can be registered. Buyers are currently protected from such risks by Letters of Obligation, which are solicitor's letters that offer a guarantee against such problems. These letters are backed by the solicitors' insurance policy.

The current practice of Letters of Obligation could be described as a historical accident. In the past, people had "family solicitors" who knew their clients very well. This is far less common in modern conveyancing practice and insurers are increasingly concerned about the risks associated with solicitors not knowing their clients' backgrounds in detail.

For the Advance Notices provisions to work, the costs of drawing up and registering Advance Notices will need to be less than solicitors' current insurance and handling costs associated with Letters of Obligation. For the purposes of this report, it has been assumed that the cost might be that of the lowest fee for an electronic transaction currently charged by RoS, £20.

So if moving from Letters of Obligation to Advance Notices led to a saving of ½ an hour of legal time (at a cost of £73¹¹) there would be a potential saving of £53 per case. Given that there was an average of 135,443 residential transactions per year over the last six years, this could generate an annual cost saving of £9.9 million.

It might be said that the net effect for solicitors' clients is that one system of protection against risk is replaced with another. However, the new system confers a new and additional benefit: once entered in the Land Register's Application Record, the Advance Notice creates a priority protecting the buyer and/or lender against the threat of an adverse or competing application that is presented during the next 35 days.

Given that at present frauds are sometimes perpetrated in the "registration gap", the priority conferred by Advance Notices can be expected to protect against such frauds. This is one area of potential savings. Of all the cases regarding a dispute over ownership of property brought to court each year, around a quarter concern fraud. There are two main types of fraud that arise. The majority of fraud cases are against commercial organisations, for example mortgage lenders (due to a party feigning ownership to gain access to mortgage funds). There are also

¹¹ Derived from "Benchmarks and Cost of Time; the 2008 Survey of Legal Practices in Scotland", Law Society of Scotland, March 2009.

cases where a party may feign ownership to sell a property, which normally have domestic links (for example, a wife selling the family home while the husband is abroad or vice versa). Most fraud cases involve impersonation so the majority of cases will not be impacted by this Bill.

However, the cost of fraud could also be reduced through the legislative changes, providing more protection against fraudsters who feign ownership. If fraud was reduced by 25% as a result of the proposed legislation then this would equate to a saving of approximately £230,500 per annum.

5.5 One-Shot Rule

Currently, the Land Registration (Scotland) Act 1979 compels the Keeper to allow solicitors opportunities to correct problems in applications for registration, while these are still in the Keeper's hands. Such problems are commonplace. A complex system of requisition procedures, entailing many applications being placed in "stand over" (storage) while problems are addressed, has grown up around this requirement, causing inefficiencies and increasing the costs of registration.

The one-shot rule proposed in the draft Bill is intended to oblige solicitors to get their applications right the first time. Quite simply, the rule will be that an application will be quickly rejected by the Keeper if it is defective or incomplete. The rule has the potential to deliver savings to both RoS and conveyancing solicitors, if it reduces the requirement to deal with some cases more than once. This could be the case if it could be demonstrated that the current system encourages solicitors to externalise costs of administration associated with checking the accuracy of applications to RoS. It could be argued that through not taking on the full burden of the administrative cost after completing sub-standard applications, conveyancing solicitors may not have a strong incentive to ensure that applications are right first time.

The one-shot rule will increase the incentive for solicitors to get applications right first time. This should deliver cost savings to RoS and to conveyancing solicitors since it will generally be less expensive to deal with a case once than on multiple occasions.

In 2007/08 24.6% of First Registrations and 14.1% of Dealings with Whole were on stand over; in 2008/09 this was 13.6% and 10.7% respectively. There are potential cost savings from implementing the one-shot rule for both RoS and solicitors:

- if it is assumed that each stand over case takes RoS one day representing approximately between 14-21% of RoS registration staff time, then introducing the one-shot rule would equate to a potential annual cost saving of £3.5-5.2 million, based on 2007/08 and 2008/09 figures, an average of £4.4 million;
- if it is assumed that each stand over case costs solicitors ½ a day with an hour rate of £146.28 and with the introduction of the one-shot rule unsuccessful applications are reduced in the long-term by 80% this could amount to an annual cost saving of £3.9-17.4 million based on 2007/08 and 2008/09 figures, an average of £10.7 million.

In the longer term, cost savings associated with greater accuracy should also be delivered from e-enablement since electronic and automated systems are set up so that they do not allow inaccurate or incomplete applications to be accepted.

5.6 Prescriptive Claimants

The prescriptive claimants provisions allows the ability for land which is not used and where there is uncertainty regarding ownership to be put back into economic use. This would allow a party to apply for and if successful gain ownership over an uncertain right to property therefore giving the applicant security which would allow investment in its development, which could produce benefits for the economy and society.

There are approximately 50 applications per year for such ownership over land and in the first nine months of 2009, RoS received 440 pre-registration enquiries about a *non domino*¹² titles. There were 10,832 hectares of derelict and urban vacant land recorded in the Scottish Vacant & Derelict Land Survey 2008, of which 2,630 hectares (24%) were urban vacant and 8,203 hectares were derelict (76%). Out of all the 10,832 hectares of derelict and urban vacant land recorded in 2008, 15% (1,571 hectares) has unknown ownership.

The average size of a derelict site in Scotland is 1.8 hectares. 74% of all Scotland's derelict sites are to be found within a settlement. Where the length of time a site has lain unused was known, 32% (1,702 hectares) of vacant and derelict land within settlements and 45% (1,757 hectares) of derelict land within the countryside had been unused since before 1986 (Table 10 and Table 11). Taken as a whole, 32% (3,459 hectares) of all vacant and derelict land across Scotland has been lying unused for at least 23 years.

These statistics imply that there is a significant potential economic benefit from bringing this land into use. There may also be environmental benefits as a significant percentage of the derelict land is contaminated and returning this to use would prompt remediation.

To calculate the potential economic impact of bringing these sites into use the average economic value of a site of derelict land has been estimated to be 30% of the average value of property (£46,679). When the property or site is brought back into use, its estimated economic value has risen to the full average price for property which in July 2009 was £155,598 representing an increase in value of £108,919 per site.

This is a modest estimate of the economic value of each site, as the sites could be put to various uses to serve the community, businesses, etc which can have a higher economic value than housing. Furthermore, this calculation is not accounting for the economic impact of developing the sites.

The average size of a derelict site is 1.8 hectares, so on this basis it can be estimated there are 858 sites where ownership is uncertain. If just one-third of these sites were brought back into economic use this would have an economic impact of around £32 million in increased value to the economy.

5.7 Information Provided to Public Sector

Enabling the public sector to have access to accurate and reliable data can have a huge impact on the efficiency of the services they undertake. RoS potentially has scope to introduce a range of targeted services to supply improved information services to the public sector. To illustrate the potential benefits this could deliver to the operation of public services one example of this (which will be

¹² A disposition of property granted by a party who has no title to it.

discussed in this section) could be the proposed National Property Ownership Service. In line with the Scottish Government's Customer First Objective, the 32 Scottish local authorities have built the Definitive National Address Gazetteer. RoS matches this to a Registers Address Gazetteer with the objective of improving the quality of RoS-held data. This involves RoS delivering matched, timely and accurate property ownership information to each of Scotland's local authorities. A description of each area of impact is outlined below.

- **Housing Benefits** – RoS will aid local authorities to tackle difficulties experienced in processing housing benefit forms and with housing benefit overpayments. Firstly, through supplying this service RoS is predicted to make a significant impact in helping local authorities to achieve the government target for processing benefit claims within 14 days. The new service could, in certain circumstances, deliver property ownership data up to 50 days earlier to local authorities and thereby reduce processing time for some housing benefit claims significantly. Furthermore, by reducing the administrative effort required to process property ownership data it is envisaged that such effort saved could help reduce processing time further. Secondly, RoS could have a significant impact on reducing housing benefit overpayments, which are affected by a number of property ownership verification issues.
- **property conservation and the implementation of the Housing (Scotland) Act 2006** – local authorities now have designated powers to issue maintenance orders to address sub-standard properties within the private housing sector. However, authorities can experience difficulty in ascertaining property owner details where property owners are liable for such charges, causing operational difficulties;
- **verifying financial assessments for residential care** - where people require social support (such as residential care for elderly people in care homes) there is a requirement to undertake a financial assessment to determine whether they are eligible for the council to pay for their care. Property is considered to be an asset that could be sold to pay for such care so provision of accurate and timely property ownership information could be used to produce an automatic 'hot list' of assessments which require investigation from a property ownership perspective;
- **other financial collections** – local authorities are required to bill and collect revenues for various reasons (besides council tax etc) for example social care, commercial property rentals, etc. Occasionally, if collection proves difficult there may be a need to litigate to recover monies owed and property ownership information can assist in this;
- **planning developments, notifications and enforcements** – the potential benefits of this have yet to be examined however they may be in the following areas; asset management, major development planning, enforcement of building warrants and standards, and planning notification; and
- **Registered Landlords Scheme** – in 2006 the Scottish Government introduced a scheme to register landlords with the aim of removing the worst landlords and giving tenants confidence that their landlords uphold standards thereby improving the private rented market. The property ownership service could be of value in that it could be used as a source to cross check landlord declarations and to provide hotlists for inaccurate and or missing declarations.

The economic benefit of efficiency savings and collection rates for local authorities for each has been quantified in the “Property Ownership Service Transforming Government Feasibility Study”. This has been partly based on the information held by RoS on its Land Register (being currently 55% complete), which is a determining factor influencing how much RoS could contribute.

The benefits associated with, the example used here of improving information provision to the public sector, the National Property Ownership Service would be expected to increase if the draft Bill led to a rise in the proportion of titles on the Land Register. If the Land Register rate of completion increased from 55% to 80% (which is the current % of property in the first Land Register operational area, Renfrewshire, that is currently on the register) then we can assume that RoS information provided to Local Authorities would generate a higher impact¹³.

The table below show the benefits this would generate. The increase from 55% to 80% coverage of the Land Register could increase the benefits associated with the National Property Ownership Service by almost £9 million.

Table 5.2 – Local Authority Additional Benefit Projections from 55% to 80% LR (£)

Benefit	Year 1	Year 5
Scotland Average Local Authority		
<i>Housing Benefit</i>	33,696	150,475
<i>Property Conservation</i>	6,327	94,905
<i>Financial Assessments for Residential Care</i>	51,629	274,105
<i>Other Financial Collections</i>	5,652	30,005
Total	97,303	549,490
Total Scotland Local Authorities		
Housing Benefit	539,129	2,407,594
Property Conservation	101,232	1,518,482
Financial Assessments for Residential Care	826,062	4,385,677
Other Financial Collections	90,427	480,084
Total	1,556,851	8,791,837

Source: BiGGAR Economics Analysis based on figures from ‘Property Ownership Service Transformation Government Feasibility Study’, RoS, CEC & BT Joint Steering Group, 30th October 2006

To further illustrate the benefits of improved information a second example is tax collection. RoS is a source used by local authorities in the collection of Council Tax. The previous economic impact study estimated that information from RoS helped with the collection of £91 million in Council Tax in Scotland. Increasing the coverage of the Land Register to 80% could increase this by a further £55 million.

¹³ Councils have access to both the Land Register and Register of Sasines so can access all the property information held by RoS. However, in practice it is the ease of accessing the information on the Land Register which delivers most of the benefit, as Councils are more likely to use this information.

5.8 Information Provided to Private Sector

Any increase in the coverage of the Land Register will improve the quality of the information held by RoS. This could make the information more attractive to private sector organisations.

Since the draft Bill provides for no changes to the procedures or rules that govern the information that can be made available to private sector organisations, no impact has been calculated.

However, it is worth noting that as the quality of the information improves, requests for information from the private sector are likely to increase. RoS might need to consider whether current policies will continue to be appropriate in such circumstances.

5.9 Electronic Conveyancing

The current law is that conveyancing contracts (missives) require to be signed on paper. Although a recent change to the law has permitted certain conveyancing deeds to be created, signed and registered electronically, at this point in time all Sasine deeds and many Land Register deeds also require to be signed on paper. In practice only around 5% of Land Register deeds are currently in electronic form.

The draft Bill will remove the requirement of a physical signature and therefore enable the whole process to be done electronically. This has potentially huge benefits for RoS, the legal profession and buyers of property.

RoS could provide a faster and more accurate service as electronic conveyancing would cut down on human error when processing forms. As a result the Land Register would be more accessible electronically and easier to update. This could lead to significant savings in administrative costs from the majority of information being handled in electronic transactions. Moreover, it may have additional efficiency savings, reducing the resources required to process one application.

Conveyancing professionals would be able to achieve efficiency savings in their administrative and communication services of at least 50%. They could also increase the quantity of applications that they can process in a given time, increasing their competitiveness or allowing them to make efficiency savings regarding the distribution of their resources.

Buyers of property would benefit by having access to a faster, more efficient and accurate service. Buyers would also have to spend less time and less funds on this process taking away a portion of the complexity associated with exchanging properties.

This would cut the cost of conveyancing for buyers impacting on the property market and giving them extra money to spend elsewhere in the economy. The next section discusses the implications of reducing transaction costs for the market.

6 TRANSACTION COST IMPACTS

The key impacts of the draft Bill in the wider economy will be realised if they lead to a reduction in the transaction costs associated with buying a property and with other property related transactions such as re-mortgaging. These will be realised as a result of:

- savings to RoS associated with completing the Land Register could be passed on in terms of reduced registration fees (subject to considerations about the costs of operating the system and the need for RoS to have sufficient resources to meet costs over the economic cycle); and
- reduced conveyancing costs associated with e-enablement being passed on in reduced legal fees.

When these impacts will occur will depend on the timescales required to complete the Land Register and the timescales required for conveyancing solicitors to deliver the cost savings associated with e-enablement.

6.1 Transaction Cost Reductions

6.1.1 Residential Transactions

The table below outlines the estimated current cost of transactions for buying property. This is the basic average cost and does not include estimates for insurance and related mortgage fees for changing or exiting mortgage.

Table 6.1 – Average Cost per Transaction by Value of Property (£)

Value of Property	Reg. Fee ¹⁴	Legal Fee	Mortgage Arrange Fee	Valuations & Surveys	Stamp Duty Land Tax (% property value)
5,000- 50,000	30	450	200 - 600	200 - 800	0%
+50,000-100,000	100	450	200 - 600	200 - 800	0%
+100,000-150,000	200	450	200 - 600	200 - 800	0/1% ¹⁵
+150,000-200,000	300	450	200 - 600	200 - 800	0/1%
+200,000-300,000	400	465	200 - 600	200 - 800	0/1/3% ¹⁶
+ 300,000 - 500,000	500	465	200 - 600	200 - 800	3%
+500,000 - 700,000	600	495	200 - 600	200 - 800	4%
+ 700,000 - 1,000,000	700	495	200 - 600	200 - 800	4%
+1,000,000 - 2,000,000	1,000	495	200 - 600	200 - 800	4%
+ 2,000,000 - 3,000,000	3,000	800	200 - 600	200 - 800	4%
+ 3,000,000 - 5,000,000	5,000	800	200 - 600	200 - 800	4%
5,000,000+	7,500	800	200 - 600	200 - 800	4%

Source: Registers of Scotland, Mortgage Quote Online, Motley Fool & Law Society of Scotland

The above table highlights that the registration and legal fees do contribute a significant amount to the price of the property transaction, although Stamp Duty Land Tax is by far the largest contributor. The draft Bill has two implications that will reduce transaction costs for stakeholders in the property market.

Firstly, it could lead to reduced registration fees. When the majority of residential property is on the Land Register this should dramatically reduce the number of First Registrations. The table below shows the effect of a reduction in registration fees of one-third.

¹⁴ The registration fees quoted are for transfer carried out on paper (Table A of the RoS Fee Order) and not for transfers made using Automated Registration of Title to Land (Table B in the RoS Fee Order) where there is a reduced fee.

¹⁵ 0% for property valued below £175,000 (until December 2009), and 1% for property valued £175,000 to £250,000.

¹⁶ For property valued £250k to £500k

Table 6.2 – Potential Registration Cost Saving per Transaction by Value of Property (£)

Value of Property	Registration Fee	1/3 rd Reduction	New Registration Fee
+5,000 - 50,000	30	10	20
+50,000 – 100,000	100	33	67
+100,000 - 150,000	200	67	133
+150,000 - 200,000	300	100	200
+ 200,000 - 300,000	400	133	267
+ 300,000 - 500,000	500	167	333
+500,000 - 700,000	600	200	400
+ 700,000 - 1,000,000	700	233	467
+1,000,000 - 2,000,000	1,000	333	667
+ 2,000,000 - 3,000,000	3,000	1,000	2,000
+ 3,000,000 - 5,000,000	5,000	1,667	3,333
Exceeding 5,000,000	7,500	2,500	5,000

Source: Registers of Scotland

Secondly, e-enabling conveyancing should lower the legal cost per transaction - through providing cost and efficiency savings to conveyancing solicitors, as discussed in the previous section. This should feed through to price reductions in a competitive market place. The extent to which this happens would depend on the size, competitive nature and openness of the market.

Based on the innovations that have already taken place in the conveyancing market, it is not difficult to see how e-enablement could reduce typical legal costs by 50% (compared with the traditional model of conveyancing). The table below shows this effect on legal fees.

Table 6.3 – Potential Legal Cost Saving per Transaction by Value of Property (£)

Value of Property	Legal Fee	50% Reduction
+5,000 - 50,000	450	225
+50,000 – 100,000	450	225
+100,000 - 150,000	450	225
+150,000 - 200,000	450	225
+ 200,000 - 300,000	465	233
+ 300,000 - 500,000	465	233
+500,000 - 700,000	495	248
+ 700,000 - 1,000,000	495	248
+1,000,000 - 2,000,000	495	248
+ 2,000,000 - 3,000,000	800	400
+ 3,000,000 - 5,000,000	800	400
Exceeding 5,000,000	800	400

Source: Mortgage Quote Online & Law Society of Scotland

Taking the registration and legal fee reduction together the table below shows the potential total saving of these two components for each value of property transacted.

Table 6.4 – Total Potential Saving per Transaction by Value of Property (£)

Value of Property	Registration Fee Saving	Legal Fee Saving	TOTAL SAVING
+5,000 - 50,000	10	225	235
+50,000 - 100,000	33	225	258
+100,000 - 150,000	67	225	292
+150,000 - 200,000	100	225	325
+ 200,000 - 300,000	133	233	366
+ 300,000 - 500,000	167	233	399
+500,000 - 700,000	200	248	448
+ 700,000 - 1,000,000	233	248	481
+1,000,000 - 2,000,000	333	248	581
+ 2,000,000 - 3,000,000	1,000	400	1,400
+ 3,000,000 - 5,000,000	1,667	400	2,067
Exceeding 5,000,000	2,500	400	2,900

Source: Registers of Scotland, Mortgage Quote Online & Law Society of Scotland

To put this in the context of the entire market, the table below shows the average¹⁷ net number of property transactions in Scotland in the residential property market. It then calculates the cost of registration fees and conveyance currently in the market before calculating the reduced conveyance and registration fee as a result of the proposed new legislation. The difference between these is the potential saving to the residential property market annually.

On this basis, the total reduction in transaction costs in Scotland per annum in the residential property market as a result of these changes could amount to over £39.3 million annually.

¹⁷ Average residential property / land transactions over six years between 2003/04 to 2008/09 (excluding re-mortgages)

Table 6.5 – Potential Total Transaction Cost Savings in Residential Market (£)						
Value of Property	Number of transactions	Current registration cost	Current legal cost	Reduced registration fee	Reduced Legal Cost	TOTAL SAVING
+5,000 - 50,000	22,339	670,165	10,052,475	223,388	5,026,238	5,249,626
+50,000 - 100,000	42,292	4,229,233	19,031,550	1,409,744	9,515,775	10,925,519
+100,000 – 150,000	31,071	6,214,133	13,981,800	2,071,378	6,990,900	9,062,278
+150,000 – 200,000	18,873	5,661,800	8,492,700	1,887,267	4,246,350	6,133,617
+ 200,000 - 300,000	14,277	5,710,867	6,638,883	1,903,622	3,319,441	5,223,063
+ 300,000 - 500,000	5,368	2,683,750	2,495,888	894,583	1,247,944	2,142,527
+500,000 – 700,000	740	443,800	366,135	147,933	183,068	331,001
+ 700,000 - 1,000,000	353	247,217	174,818	82,406	87,409	169,814
+1,000,000 – 2,000,000	121	121,000	59,895	40,333	29,948	70,281
+ 2,000,000 – 3,000,000	8	22,500	6,000	7,500	3,000	10,500
+ 3,000,000 – 5,000,000	2	9,167	1,467	3,056	733	3,789
Exceeding 5,000,000	1	7,500	800	2,500	400	2,900
TOTAL	135,443	26,021,132	61,302,409	8,673,711	30,651,205	39,324,915

Source: Registers of Scotland, BIGGAR Economics Analysis

6.1.2 Commercial Transactions

The registration fee for commercial transactions is the same as for residential. It is based on the value of the property or land being transacted regardless of what purpose it is being put to.

However, the associated costs and the legal fees may differ. The commercial transaction may be more concerned with risk and so may spend nearer the upper limit for valuations and surveys, especially if they are more likely to develop the site. The percentage reduction in legal fees will also be far more marginal as commercial property transactions tend to be more complex in nature.

However, it would be reasonable to assume that a similar saving to that in residential transactions might be possible in the commercial market, although the saving would represent a much lower proportion of the legal fees.

On this basis, the total reduction in transaction costs in Scotland per annum in the residential property market as a result of these changes could amount to over £2.4 million annually. This is shown in the table below.

Table 6.6 – Potential Total Transaction Cost Savings in Commercial Market (£)

Value of Property	Number of transactions ¹⁸	Current registration cost	Current legal cost	Reduced registration fee	Reduced Legal Cost	TOTAL SAVING
+5,000 - 50,000	878	26,325	394,875	8,775	197,438	206,213
+50,000 - 100,000	916	91,583	412,125	30,528	206,063	236,590
+100,000 - 150,000	564	112,700	253,575	37,567	126,788	164,354
+150,000 - 200,000	369	110,750	166,125	36,917	83,063	119,979
+ 200,000 - 300,000	470	187,867	218,395	62,622	109,198	171,820
+ 300,000 - 500,000	541	270,250	251,333	90,083	125,666	215,750
+500,000 - 700,000	234	140,100	115,583	46,700	57,791	104,491
+ 700,000 - 1,000,000	239	167,183	118,223	55,728	59,111	114,839
+1,000,000 - 2,000,000	317	317,333	157,080	105,778	78,540	184,318
+ 2,000,000 - 3,000,000	117	350,000	93,333	116,667	46,667	163,333
+ 3,000,000 - 5,000,000	108	540,833	86,533	180,278	43,267	223,544
Exceeding 5,000,000	170	1,272,500	135,733	424,167	67,867	492,033
TOTAL	4,920	3,587,425	2,402,913	1,195,808	1,201,456	2,397,265

Source: Registers of Scotland, BiGGAR Economics Analysis

¹⁸ Average commercial property / land transactions over six years between 2003/04 to 2008/09 (excluding re-mortgages)

6.1.3 Commercial & Residential Transaction Cost Saving

To put the combined transaction cost savings in the residential and commercial property market (which amounts to a combined total of £41.7 million per annum) in the wider context the legal services in Scotland has an estimated turnover of £1 billion and transactions which took place in the residential and commercial property market in 2007/08 were estimated to be valued at £28.7 billion. This reduction in transaction costs represents 4.2% of legal services and 0.1% of the residential and commercial property market.

6.2 Impact of Transaction Cost Reductions

6.2.1 Domestic Property and Finance Markets

Economists view transaction costs as representing negative externalities arising from market imperfections, such as imperfect information. If transaction costs are reduced then market imperfections are addressed which allows greater competition.

If transaction costs are reduced then competition should lead to lower market prices. As market prices are lowered according to classical economic theory this can lead to supply being able to meet greater demand in the market place increasing the quantity of transactions or output.

In this context, the effects on two specific markets are particularly important – the buying of property and the re-mortgage market.

In the property market, lowering the transaction cost is unlikely to have a significant effect on market demand. This is because the buying and selling of property is driven by other forces rather than the cost of transaction, such as price of property, profile of the area (education and service provision), the availability of jobs, etc. Moreover, even substantial savings in registration fees and legal costs are insignificant when compared to Stamp Duty Land Tax, the largest portion of transaction costs associated with buying property.

Lower transaction costs could have a greater influence in the re-mortgage market. One of the key barriers to someone re-mortgaging their property is the cost directly related with doing so. Legal costs play a prominent role in this as well as exit costs (of leaving current mortgage) and application fees (charged by mortgage lenders so they can offer lower rates).

When deciding whether to remortgage it is necessary to recoup the transaction cost of the change within a certain time period (say two years) to make the change worthwhile. Lowering the transaction costs, therefore significantly lowering the price of remortgaging, could lead to greater competition in the re-mortgage market as the barriers to switching mortgages would be lowered. The extent to which this would happen depends on the propensity of market agents to move (i.e. many customers remain loyal to their lenders and rarely consider moving to secure savings), the competitiveness of the market and barriers to market entry.

Transaction cost savings associated with registration and legal fee reductions could be substantial. For example, the total cost saving for a property valued at £175,000 could be as much as £325. Given typical mortgage exit fees of £200

and arrangement fees of £200, this saving could reduce the total transaction cost from £1,150 to £825, a saving of 28%.

It might be reasonable to assume that increased price competition in the market might result in savings to customers, at least as much as the potential transaction cost savings. A saving of £325 per re-mortgage would equal an impact of £13 million to £18 million (based on 40,000 re-mortgages in 2009 and 56,000 in 2008).

Table 6.7 – Saving in Remortgage Transaction Costs by Value of Property (£)

	2008	2009
Loans in the Remortgage Market	56,000	40,000
Current price of transactions	63,940,000	46,000,000
Reduced price of transactions	45,870,000	33,000,000
TOTAL SAVING	18,070,000	13,000,000

Source: BiGGAR Economics Analysis, Council of Mortgage Lenders

However, this estimated saving may be much lower than could be potentially realised since the reduced transaction cost might encourage more customers to consider re-mortgaging. Even a small increase in the number of customers willing to switch, as a result of the reduced transaction costs, might encourage lenders to consider the products on offer and their prices. Such an impact could even benefit mortgage customers not re-mortgaging, if the lenders applied changes to existing as well as new customers.

6.2.2 Commercial Property and Finance Markets

Similar effects to those presented above could occur in the commercial property and financial markets. However, as we have established previously in section 6.1.2 the transaction cost reduction is a far lower percentage of the overall fees that are expended in the commercial market. This is likely to mean that the effect on lowering transaction costs will be far more marginal and not have the same influence on the overall price to have a significant effect on the commercial market.

7 QUANTIFYING THE TOTAL IMPACT

The preceding chapters set out a number of sources of impact. These will happen over different timescales and the figures given were typically the annual impact of fully realising the benefit. This chapter summarises the total impact of these sources by considering the total impacts over a generation as this can be considered to be a once-in-a-generation change to the legislative basis of property rights.

The table below shows two columns, the first shows each impact as presented in previous chapters of this report and the second column shows the estimated impact over a 30 year period which enables the conjoined additional impact of the entire bill to be presented.

This shows that the total impact of the reforms introduced through this draft Bill could be £3.5 billion over a 30 year period, in today's values.

Table 7.1 – Quantifying the Total Impact of the Bill over 30 Years (£)

Benefits of the Bill	Impact (of fully realising each benefit)	Impact (over 30 years)
Completion of the Land Register	5,670,000	67,360,545
Disputes	810,000	13,365,000
Keepers Warranty	40,000	660,000
One-Shot Rule	15,000,000	420,594,870
Advance Notices	10,136,699	288,895,920
Prescriptive Claimants	32,000,000	32,000,000
Information Provided to Public Sector	63,791,837	1,307,732,659
Transaction Cost Reductions	41,722,180	928,320,769
Impact of Transaction Cost Reductions	15,535,000	361,654,800
TOTAL		3,494,941,120

8 SUMMARY AND CONCLUSIONS

This economic impact study has considered whether the reforms proposed in the draft Land Registration (Scotland) Bill will have any negative impacts and costs for Scotland's economy and sustainable economic growth, as well as whether there might be positive economic impacts.

The primary objective of the draft Bill is to improve the legislative basis of the land registration system in Scotland and address the weaknesses identified in the 1979 Act that it would replace. The draft Bill therefore has a role in underpinning the current economic impact of the land registration system in Scotland. These current economic impacts include:

- underpinning the property market worth £35 billion in 2007/08 and over £20 billion in 2008/09;
- underpinning the mortgage and re-mortgage markets worth £22 billion in 2007/08 and over £14 billion in 2008/09;
- direct (turnover and employment), indirect (supplies and services) and induced (RoS staff spending wages) annual impacts associated with the operation of RoS, the provision of 1,997 jobs and a Gross Value Added (GVA) of £85.8 million;
- clarity of ownership offered by the current system reduces potential disputes, with a benefit estimated at £12.6 million per annum;
- provision of information to increase Council Tax collection rates, valued at £91 million per annum;
- impacts expected to result from the implementation of services to improve the provision and quality of information to the public sector, an example of which is the National Property Ownership Service (which utilises the information held by RoS), including preventing Housing Benefit overpayments (worth £2.2 million in the first year rising to £9.6 million in year five) and other benefits to local authorities (which could result in an estimated impact of £4.1 million for in the first year rising to £25.5 million by year 5);
- a range of wider economic benefits associated with the provision of information-based services to various stakeholders, advice to developing countries on building and establishing a system of property rights, and providing records which support Scotland's growing genealogy tourism market; and
- impacts associated with the State-backed indemnity, delivering total savings estimated at £140 million per annum that would otherwise have to be met through a private insurance-based title protection system.

In addition to underpinning the current system, the draft Bill will also introduce a number of changes to the land registration system in Scotland, several of which could have an impact on the economy.

The economic impact assessment has found no evidence of negative economic impacts, although there will be some costs associated with introducing the changes, as would be expected for virtually any change to any system.

The biggest potential cost is not associated directly with the draft Bill but with policy and operational decisions that could be made after enactment to apply some of the new triggers that are intended to accelerate the completion of the Land Register. RoS has estimated that the cost of completion could be of the order of £400 million (although more detailed work will be undertaken to consider the business re-organisation and systems issues that would be related to any decision to complete the Land Register earlier than is currently being planned for). The net effect of such costs would depend on the extent to which they could be recovered from registration fees as the final titles were transferred from Sasines to the Land Register.

Other costs to RoS will include training costs (to ensure that RoS were familiar with the new legislation and with new systems introduced) and investment in new systems. One week's training for each member of RoS staff would have an opportunity cost of around £1 million, assuming that the training was delivered in-house. RoS is in the process of investing substantially in IT systems, with average annual spend of almost £7 million. Continued investment on such a scale might be necessary for the introduction of new systems.

For solicitors, as with RoS, any changes will require investment in understanding the new legislation and in new systems and case management approaches by conveyancing solicitors. The training costs could amount to £12 million for solicitors, although these are not be additional, since solicitors are required to spend time on CPD anyway. Moreover, any such costs to conveyancing are likely to be marginal when considered in the context of the significant changes taking place in the conveyancing market which require investment in case management systems and in re-engineering processes in order to deliver the cost savings that practices will need to make if they are to remain competitive. To provide some context as to the costs of introducing case management systems to 90% of the 860 conveyancing firms this would amount to an investment in the range of £1.5 million to £2.5 million.

Even the costs which are incurred might be considered to be investments since new systems and case management systems have the potential to deliver efficiencies and cost savings in the longer term.

There are a number of positive economic impacts associated with some of the changes proposed by the draft Bill, including:

- completion of the Land Register could allow RoS to deliver significant annual costs savings, perhaps as much as £5.6 million in staff costs alone, with further cost potential savings associated with increased potential for new and automated systems that this would facilitate;
- increased certainty could reduce litigation, costing £810,000 per year;
- the greater clarity of rules associated with the Keeper's warranty (the state back indemnity) could save £40,000 in reduced payouts;
- impacts as a result of Advance Notices of £9.9 million from costs savings to conveyancing solicitors and £230,500 per year from reduced fraud;
- bringing one-third of the sites back into economic use where there might be doubts about ownership perhaps resulting in a total value of £32 million, over time;

- the introduction of a one-shot rule for submitting correct applications for title transfer could result in a cost saving amounting to £15 million per annum;
- additional benefits associated with services to improve the provision and quality of information to the public sector (using the example of the proposed National Property Ownership Service) of £9 million per annum; and
- provision of additional information to increase Council Tax collection rates, valued at £55 million per annum.

The most significant benefits associated with the draft Bill in the wider economy will be realised if the cost savings lead to a reduction in the transaction costs associated with buying a property and with other property related transactions such as re-mortgaging. These will be realised as a result of savings to RoS associated with completing the Land Register being passed on in terms of reduced registration fees and reduced conveyancing costs associated with e-enablement being passed on in reduced legal fees.

When these impacts will occur will depend on the timescales required to complete the Land Register and the timescales required for conveyancing solicitors to deliver the cost savings associated with e-enablement.

When realised, these impacts could be significant, including:

- potential transaction cost savings in the residential property market of £39.3 million per annum;
- potential transaction cost savings in the commercial property market (which may underestimate the true potential for cost savings in practice – does not include time charged for searches / preparing documents / etc) of £2.4 million per annum;
- potential additional savings in the re-mortgage market of £13-18 million per annum; and
- additional significant savings to mortgage holders if price competition stimulated by the transaction cost savings resulted in reduced prices to lenders' existing customers as well as new customers.

Overall, these impacts are significant. Over a 30 year period, the impact could be in the order of £3.5 billion, in today's prices.

In summary, the economic impact of the Bill is expected to be positive. No negative economic impacts have been identified and, while there are likely to be costs associated with the changes introduced, the longer term benefits and cost savings are expected to far outweigh the short term implementation costs. The impact of reduced transaction costs in property and mortgage markets could be significant.

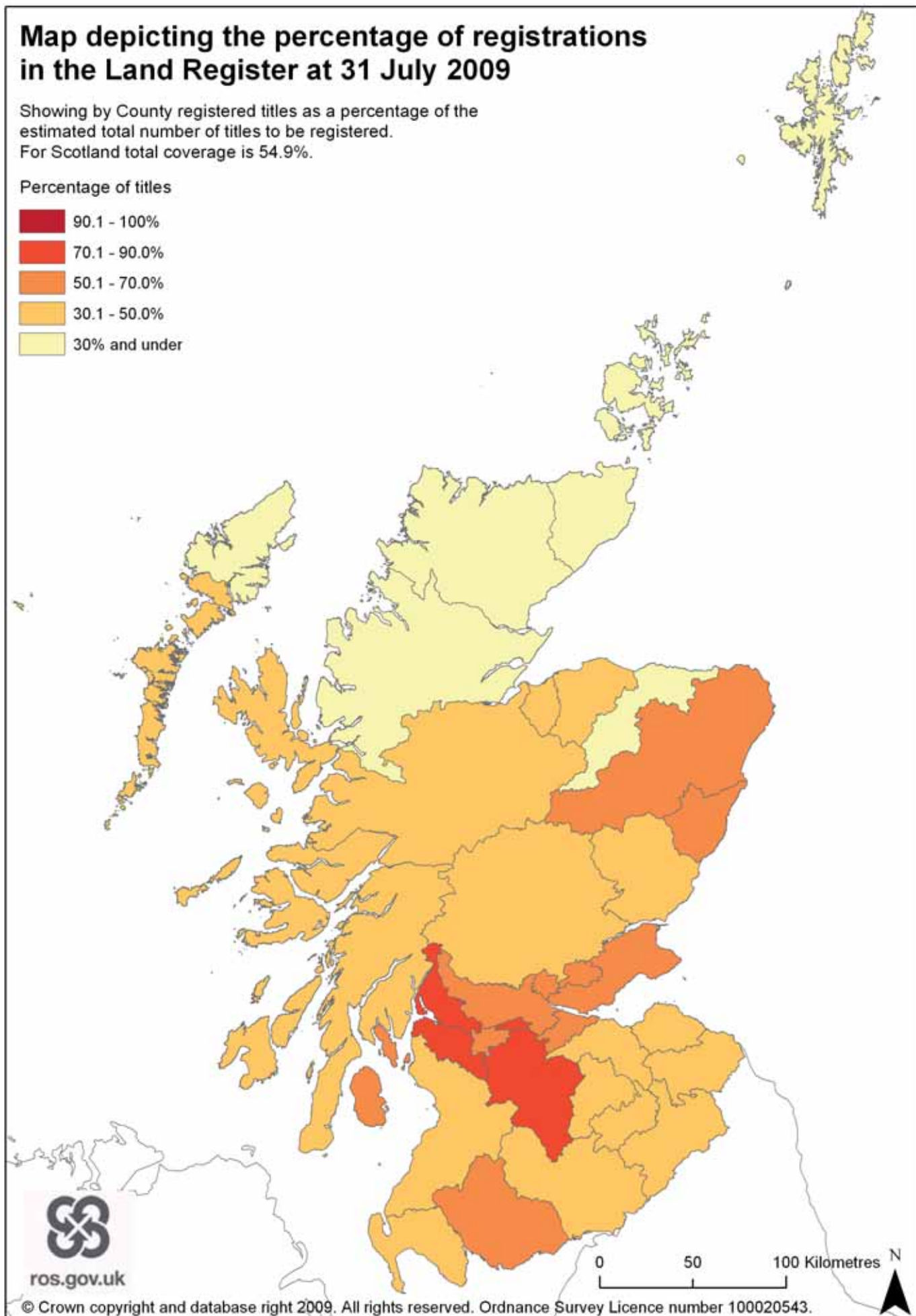
Appendix D

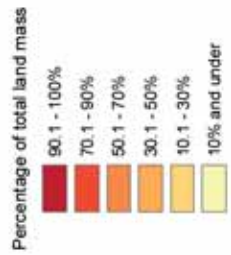
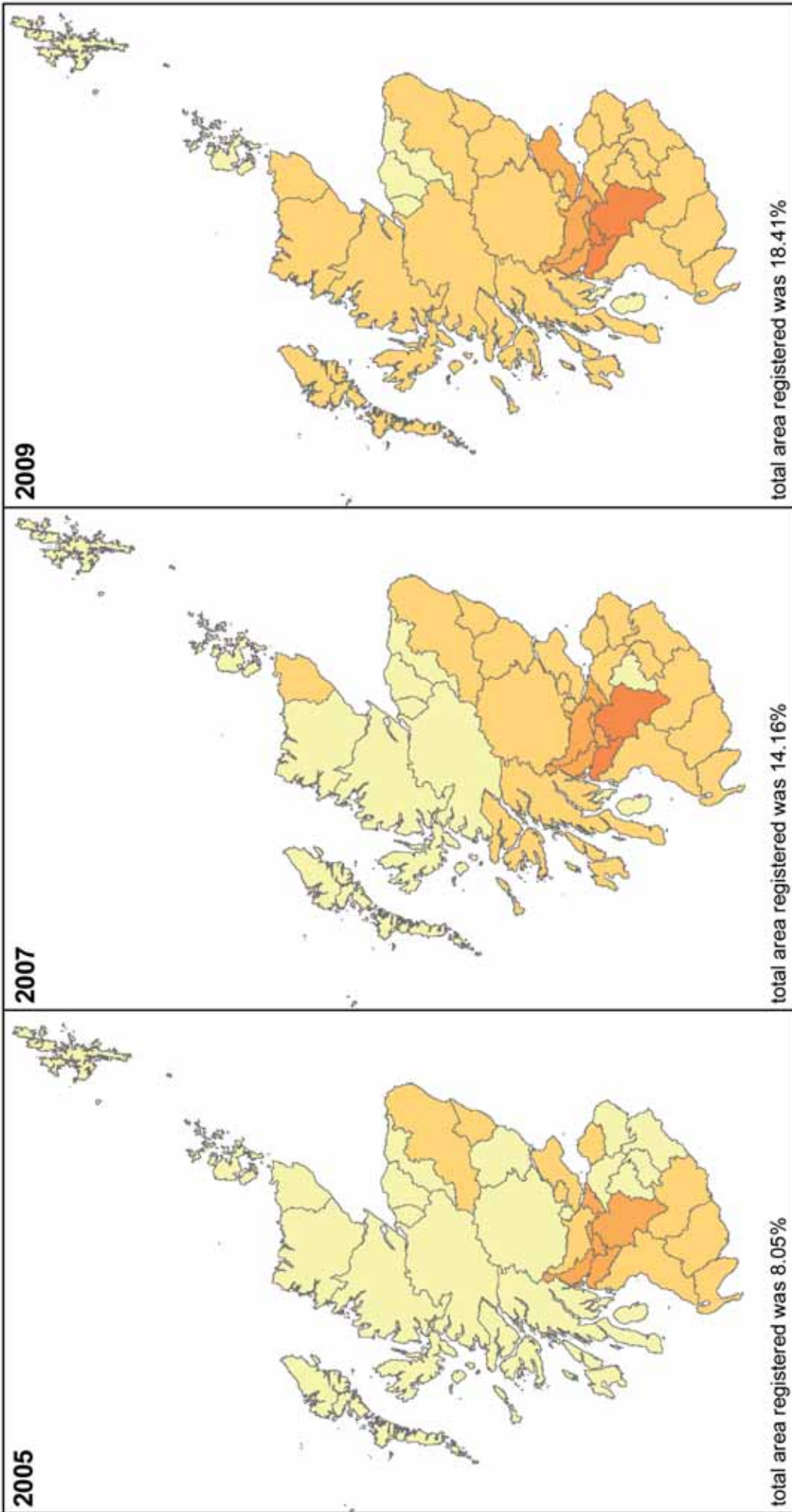
Land Register Coverage

Map depicting the percentage of registrations in the Land Register at 31 July 2009

Showing by County registered titles as a percentage of the estimated total number of titles to be registered.
For Scotland total coverage is 54.9%.

Percentage of titles





Map depicting the percentage of Scotland's land mass registered in the Land Register since 2005.

By Registration County

2005 data at 31 December 2005, 2007 data at 31 May 2007 and 2009 data at 31 May 2009.



Appendix E

Mock-ups of "shared plot title sheet"

and "sharing plot title sheet"



QUICK COPY

TITLE SHEET AND
CADASTRAL MAP EXTRACT

Title Number: FFES200

Subjects: FOOTPATH SERVING 14 AND 16 RYAN
ROAD AND 2 TORRIDON PLACE,
GLENROTHES KY6 2EN.

THIS IS A SHARED PLOT TITLE SHEET



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TITLE NUMBER FFES200

A 1

A. PROPERTY SECTION

DATE OF FIRST REGISTRATION
30 MAY 1995

DATE TITLE SHEET UPDATED TO
02 SEP 1999

DATE LAND CERTIFICATE UPDATED TO
02 SEP 1999

INTEREST
PROPRIETOR

MAP REFERENCE
NO2600NW

DESCRIPTION

Subjects Footpath serving 14 and 16 RYAN ROAD and 2 TORRIDON PLACE, GLENROTHES KY6 2EN plot number FFES200 on the Cadastral Map.

Note The minerals are excepted. The conditions under which the minerals are held are set out in the Disposition in Entry 1 and the Deed of Conditions in Entry 2 of the Burdens Section.

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TITLE NUMBER FFES200

B 1

B. PROPRIETORSHIP SECTION

SHARING PLOTS	
The subjects in this title are accessory to the following sharing plots to the <i>pro indiviso</i> extent specified	
Plot	Share
FFE800	One third
FFE18492	One third
FFE23614	One third

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TITLE NUMBER FFES200

C 1

C. SECURITIES SECTION

Note: this is a shared plot title sheet. The subjects in this title sheet may be encumbered by securities disclosed on the sharing plot title sheets.

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TITLE NUMBER FFES200

D 1

D. BURDENS SECTION

Note: this is a shared plot title sheet. The subjects in this title sheet may be encumbered by encumbrances disclosed on the sharing plot title sheets.

**ENTRY
NO**

SPECIFICATION

- 1 Disposition by Trustees of Countess of Rothes to William Smith and his heirs and assignees, recorded G.R.S. (Fife) 17 Nov. 1919, of Farm and Lands of South Parks, of which the subjects in this Title form part, contains the following:

Excepting always from the lands and others hereby disposed the whole coal, shale, ironstone, limestone, fireclay and all other metals and minerals within the said lands and others, with full power to those who may for the time be the owners thereof and those deriving right from such owners to search for, work, win, raise, calcine, manufacture and carry away the said metals and minerals or any part thereof and to make bores, sink pits, open quarries, erect kilns, houses and machinery and to make aqueducts, levels, drains, roads, railways or tramways and all others necessary for all or any of these purposes as well as to use the existing pits, quarries, kilns, houses, machinery, levels, drains, roads and others, the said owners and their foresaids being bound always to pay to the said disponee or his heirs and assignees such damages as may be thereby occasioned to the surface of the lands belonging to them or buildings thereon whether by operations on the surface or by excavations or other operations under ground as such damage shall be ascertained by two arbiters to be chosen by the said owners and their foresaids and the said disponee or his foresaids mutually or in case of their differing in opinion by an oversman to be named by said arbiters before entering upon the submission; declaring always that the said owners and their foresaids shall only be bound to pay such damages in respect of future workings or operations and shall not be liable for any damage caused at any time by old mineral workings and operations.

- 2 Deed of Conditions, recorded G.R.S.(Fife) 20 Oct. 1972, by Glenrothes Development Corporation (who and whose successors in the dominium directum or superiority of the aftermentioned Feuing Area are hereinafter referred to as "the Superiors"), Proprietors of 5230.492 acres of ground (the "Feuing Area"), of which the subjects in this Title form part, sets forth and declares burdens &c. in the following terms:

Considering that there are dwellinghouses with relative offices erected on some parts of the Feuing Area, and that on other parts we intend to erect, or permit to be erected other dwellinghouses with relative offices, and that we intend to feu the Feuing Area in separate plots and portions and for this purpose we shall be executing Feu Dispositions or other Writs and that it is proper and expedient to set forth and declare the various reservations, real burdens, conditions, prohibitions, declarations, obligations, stipulations and others incumbent on all parties to whom we may hereafter feu the Feuing Area or any part thereof (which parties and their successors in the dominium utile of the Feuing Area or any part thereof so feued are hereinafter referred to as "the Feuars" and (which areas of ground to be feued are hereinafter referred to as "the Feu" or "the Feus") viz:

FIRST

There shall be reserved to the National Coal Board the whole coal and allied minerals situated in or under the feu in terms of the Coal Industry Nationalisation Act, 1946; And there shall be reserved to the Superiors, so far as they have right thereto the whole limestone, marl, ironstone, fireclay, freestone and whinstone and all other mines

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QUICK COPY

TITLE NUMBER FFES200

D 2

D. BURDENS SECTION

**ENTRY
NO**

SPECIFICATION

metals and minerals and fossils though not hereinbefore enumerated (all hereinafter referred to as "the minerals") within or under the Feuing Area and power to the Superiors and others deriving right from them to search for, work, win and carry and lead away the same except that the surface shall not be broken for shafts or for any other purpose or otherwise used; Declaring as regards the same limestone and others herein reserved to the Superiors that the Superiors shall be liable for such damage as may be occasioned to the surface of the subjects feued or to the buildings so far as hereby authorised, erected or to be erected thereon as the liability and amount of such damage, failing agreement, shall be ascertained by two arbiters to be chosen by the Superiors and Feuars respectively or in case of the said arbiters differing in opinion by an oversman to be named by them before they enter upon the submission; but it is hereby specially provided that if damage be done by working by any lessee who under his lease is taken bound to make good such claims then any claim in respect thereof shall lie only against such lessee and not against the Superiors; And the Superiors and their foresaids shall be liable for such damage only in respect of future workings and operations and shall not be liable for any damage caused at any time by past mineral workings and operations; Declaring that in respect of the foregoing provisions for compensation the Feuars shall not in any circumstances be entitled to the remedy of interdict or to any other remedy preventive or remedial;

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TITLE SHEET AND
CADASTRAL MAP EXTRACT

Title Number: FFE800

Subjects: 16 RYAN ROAD, GLENROTHES KY6 2EN.



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LAND REGISTER
OF SCOTLAND

Officer's ID / Date

4463
6/11/2009

TITLE NUMBER

FFE800



ORDNANCE SURVEY
NATIONAL GRID REFERENCE

Scale

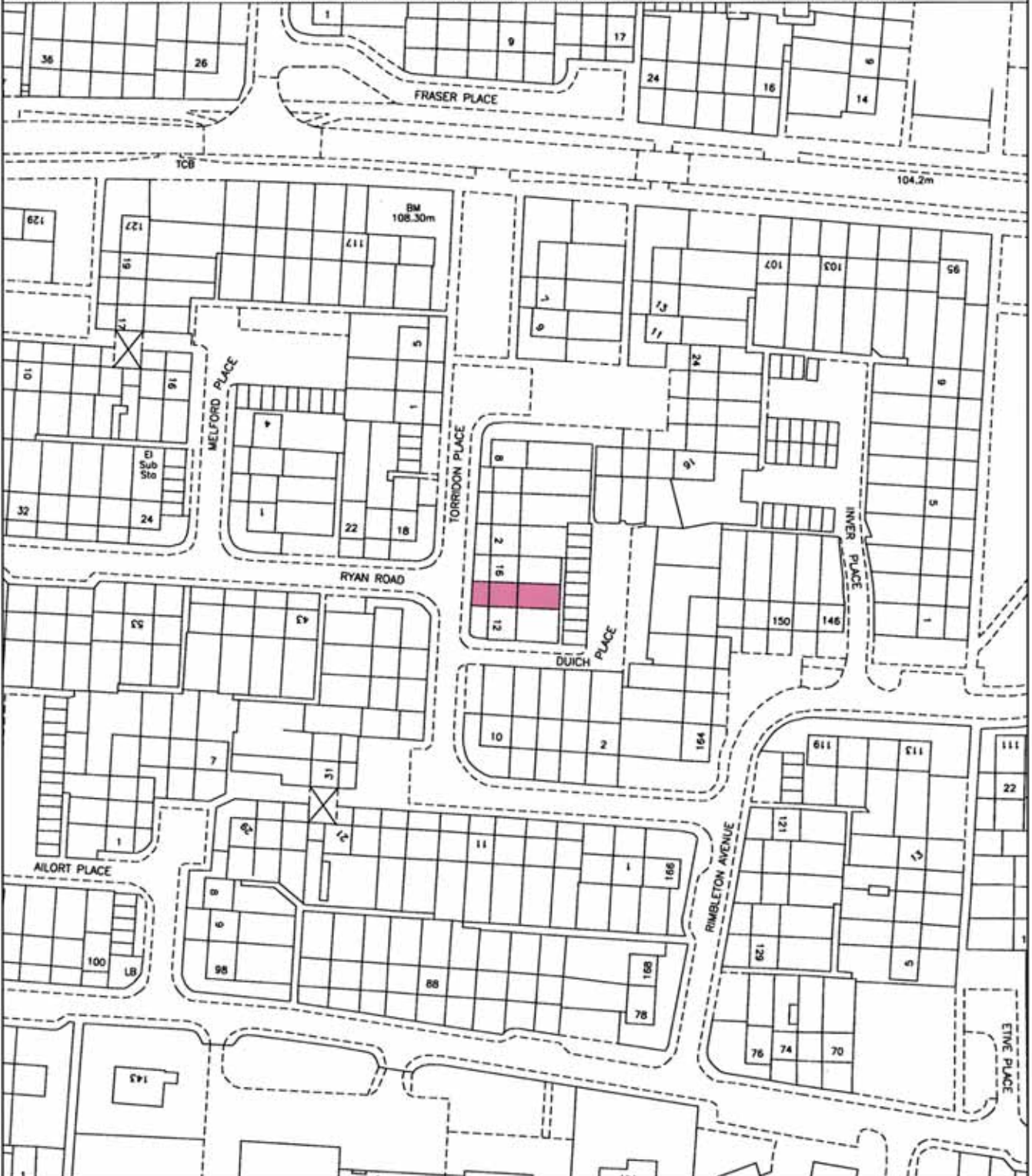
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Survey Scale

1/1250

NO2600NW NO2600NE

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TITLE NUMBER FFE800

A 1

A. PROPERTY SECTION

DATE OF FIRST REGISTRATION
30 MAY 1995

DATE TITLE SHEET UPDATED TO
02 SEP 1999

DATE LAND CERTIFICATE UPDATED TO
02 SEP 1999

INTEREST
PROPRIETOR

MAP REFERENCE
NO2600NW

DESCRIPTION

Subjects 16 RYAN ROAD, GLENROTHES KY6 2EN plot number FFE800 on the Cadastral Map Together with a joint right to the mutual water supply pipes, foul and surface water drains and downpipes and connections along with the proprietors of the other subjects using these mutual services.

SHARED PLOTS

The following shared plot(s) are accessory to these subjects to the *pro indiviso* extent specified

Plot	Share
FFES200	One third

Note The minerals are excepted. The conditions under which the minerals are held are set out in the Disposition in Entry 1 and the Deed of Conditions in Entry 2 of the Burdens Section.

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TITLE NUMBER FFE800

B 1

B. PROPRIETORSHIP SECTION

**ENTRY PROPRIETOR
NO**

ENTRY NO	PROPRIETOR	DATE OF REGISTRATION	CONSIDERATION
1	DUNCAN JOHN KERR STEWART and SUSAN STEWART spouses, 20 High Street, Kinross, equally between them and the survivor of them.	04 AUG 1999	£31950

DATE OF ENTRY
16 JUL 1999

Note: There are in respect of the subjects in this Title no subsisting occupancy rights in terms of the Matrimonial Homes (Family Protection)(Scotland) Act 1981 of spouses of persons who were formerly entitled to the said subjects.

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TITLE NUMBER FFE800

C 1

C. SECURITIES SECTION

ENTRY NO	SPECIFICATION	DATE OF REGISTRATION
1	Standard Security for £30352 and further sums by said DUNCAN JOHN KERR STEWART and SUSAN STEWART to DUNFERMLINE BUILDING SOCIETY, having its Chief Office at Caledonia House, Carnegie Avenue, Dunfermline, Fife.	04 AUG 1999

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TITLE NUMBER FFE800

D 1

D. BURDENS SECTIONENTRY
NO

SPECIFICATION

- 1 Disposition by Trustees of Countess of Rothes to William Smith and his heirs and assignees, recorded G.R.S. (Fife) 17 Nov. 1919, of Farm and Lands of South Parks, of which the subjects in this Title form part, contains the following:

Excepting always from the lands and others hereby disposed the whole coal, shale, ironstone, limestone, fireclay and all other metals and minerals within the said lands and others, with full power to those who may for the time be the owners thereof and those deriving right from such owners to search for, work, win, raise, calcine, manufacture and carry away the said metals and minerals or any part thereof and to make bores, sink pits, open quarries, erect kilns, houses and machinery and to make aqueducts, levels, drains, roads, railways or tramways and all others necessary for all or any of these purposes as well as to use the existing pits, quarries, kilns, houses, machinery, levels, drains, roads and others, the said owners and their foresaids being bound always to pay to the said disponee or his heirs and assignees such damages as may be thereby occasioned to the surface of the lands belonging to them or buildings thereon whether by operations on the surface or by excavations or other operations under ground as such damage shall be ascertained by two arbiters to be chosen by the said owners and their foresaids and the said disponee or his foresaids mutually or in case of their differing in opinion by an oversman to be named by said arbiters before entering upon the submission; declaring always that the said owners and their foresaids shall only be bound to pay such damages in respect of future workings or operations and shall not be liable for any damage caused at any time by old mineral workings and operations.

- 2 Deed of Conditions, recorded G.R.S.(Fife) 20 Oct. 1972, by Glenrothes Development Corporation (who and whose successors in the dominium directum or superiority of the aftermentioned Feuing Area are hereinafter referred to as "the Superiors"), Proprietors of 5230.492 acres of ground (the "Feuing Area"), of which the subjects in this Title form part, sets forth and declares burdens &c. in the following terms:

Considering that there are dwellinghouses with relative offices erected on some parts of the Feuing Area, and that on other parts we intend to erect, or permit to be erected other dwellinghouses with relative offices, and that we intend to feu the Feuing Area in separate plots and portions and for this purpose we shall be executing Feu Dispositions or other Writs and that it is proper and expedient to set forth and declare the various reservations, real burdens, conditions, prohibitions, declarations, obligations, stipulations and others incumbent on all parties to whom we may hereafter feu the Feuing Area or any part thereof (which parties and their successors in the dominium utile of the Feuing Area or any part thereof so feued are hereinafter referred to as "the Feuars" and (which areas of ground to be feued are hereinafter referred to as "the Feu" or "the Feus") viz:

FIRST

There shall be reserved to the National Coal Board the whole coal and allied minerals situated in or under the feu in terms of the Coal Industry Nationalisation Act, 1946; And there shall be reserved to the Superiors, so far as they have right thereto the whole limestone, marl, ironstone, fireclay, freestone and whinstone and all other mines metals and minerals and fossils though not hereinbefore enumerated (all hereinafter referred to as "the minerals") within or under the Feuing Area and power to the Superiors and others deriving right from them to search for,

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TITLE NUMBER FFE800

D 2

D. BURDENS SECTION

**ENTRY
NO**

SPECIFICATION

work, win and carry and lead away the same except that the surface shall not be broken for shafts or for any other purpose or otherwise used; Declaring as regards the same limestone and others herein reserved to the Superiors that the Superiors shall be liable for such damage as may be occasioned to the surface of the subjects feued or to the buildings so far as hereby authorised, erected or to be erected thereon as the liability and amount of such damage, failing agreement, shall be ascertained by two arbiters to be chosen by the Superiors and Feuars respectively or in case of the said arbiters differing in opinion by an oversman to be named by them before they enter upon the submission; but it is hereby specially provided that if damage be done by working by any lessee who under his lease is taken bound to make good such claims then any claim in respect thereof shall lie only against such lessee and not against the Superiors; And the Superiors and their foresaids shall be liable for such damage only in respect of future workings and operations and shall not be liable for any damage caused at any time by past mineral workings and operations; Declaring that in respect of the foregoing provisions for compensation the Feuars shall not in any circumstances be entitled to the remedy of interdict or to any other remedy preventive or remedial;

SECOND

There shall be reserved in favour of each feuar a heritable and irredeemable servitude right of access over the neighbouring subjects on all necessary occasions for the purposes of maintaining, repairing and renewing the buildings boundary walls and fences, pipes, drains and others erected on or serving the feu subject to the said servitude right of access being exercised at a reasonable time and upon reasonable notice and subject also to the feuar indemnifying the Superiors and their successors and the adjoining proprietor or proprietors in respect of all and every damage or loss occasioned by the exercise of the said right of access and there is reserved to the Superiors and their successors as proprietors of any unsold subjects in the Feuing Area a heritable and irredeemable servitude right of access over any and every feu adjoining unsold subjects for the purposes of maintaining, renewing or repairing the gables of said unsold subjects, subject again to the servitude right of access being exercised at a reasonable time and upon reasonable notice and subject also to the Superiors and their successors as proprietors of said unsold subjects indemnifying the feuar or feuars in respect of all and every damage or loss occasioned by the exercise of the said servitude right of access;

THIRD

There shall be reserved to the Superiors and their disponees or lessees and any other party deriving right from the superiors and to any local or public authority or statutory undertaker concerned for their respective interest all (if any) water pipes and mains, drain pipes, gutters, foul and surface water sewers, gas pipes, electricity cables and transformers, telephone cables or wires, television and wireless relay cables and wires existing or to be provided, and all if any other services in, on, under through or over the feus with right of access at all reasonable times for the purpose of inspecting, repairing, altering, improving, cleansing, emptying, maintaining, renewing, removing or altering the levels of the same and there shall be reserved to them also a right of wayleave in, on, under, through or over the feus for such water pipes and drains, drain pipes, gutters, foul and surface water sewers, gas pipes, electricity cables and transformers, telephone cables or wires, television and wireless relay cables and all other services as the Superiors may hereafter consider necessary for the proper servicing of any land or buildings within the New Town of Glenrothes and that by such route or routes and in such manner as the Superiors in their absolute discretion see fit with power to the Superiors and their officers, servants, and other duly authorised by them to enter at all reasonable times upon any of the feus or any of the buildings erected or to

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TITLE NUMBER FFE800

D 3

D. BURDENS SECTION

**ENTRY
NO**

SPECIFICATION

be erected thereon for the purpose of laying, inspecting, repairing, altering, improving, cleansing, emptying, maintaining, renewing, removing or altering the levels of the same provided that the Superiors and their foresaids in exercising any of the foresaid rights shall be responsible (but only in so far as applicable to their own actings) for any loss, injury or damage thereby occasioned to the feuars' property unless such loss, injury or damage arose as a result of negligence on the part of the feuars or their tenants, servants or agents;

FOURTH

The feu shall be used in all time coming for private residential purposes only and for no other purposes whatsoever and without prejudice to the said generality for the erection thereon of one dwellinghouse with relative offices; Declaring that any such dwellinghouse shall be occupied and used for the occupation by one family and for no other purpose whatsoever and any addition buildings or erections which may be authorised by the Feu Writ shall be occupied and used only as adjunct to the said building and the whole or any part of the subjects shall never be let or occupied or used for any purpose of trade, manufactory or business or for the sale of or dealing in exciseable liquor or for betting or gambling; And the feu shall always be kept by the Feuars in a neat and tidy condition and the Feuair shall never occupy or use the feu in any manner or for any purpose which may be an injury to the amenity of the neighbourhood or a nuisance to nearby feuars, proprietors, tenants and others; Declaring that it shall be within the power of the Superiors to determine what constitutes such injury to amenity or nuisance and all such injury to amenity or nuisance on being so determined and intimated to the Feuars shall be discontinued or removed forthwith at the expense of the Feuars;

FIFTH

Where no dwellinghouse has been previously so erected and completed, the Feuars shall be bound to erect and complete a dwellinghouse on the feu within two years from the date of entry thereto and also when necessary re erect and restore the same within two years of its being destroyed or damaged by fire or otherwise which dwellinghouse shall be constructed of materials and in conformity with plans all as approved in writing by the Superiors and no work of erection or re erection or restoration shall commence on the feu until such written approval has been received by the Feuars; And the feu shall be laid out in accordance with plans approved by the Superiors and the ground not occupied by the said buildings shall be and remain unbuilt on and shall be used exclusively for garden or planting or ornamental ground; The Feuars shall be bound to take all necessary measures for the preservation of all trees growing within the feu, and there shall be no cutting, felling or removal of any trees existing on the subjects either in connection with the Feuars' building and other operations or otherwise in any manner of way without the written consent of the Superiors;

SIXTH

The Feuars shall be bound to enclose the feu with a sufficient temporary fence before commencing building or other operations and they shall be bound at or before the completion of building operations to enclose the feu with walls or fences or both to be positioned and sited and constructed of material and in accordance with a design all as approved by the Superiors, in writing; And where the feu adjoins other ground belonging to the Superiors and intended to be developed for building purposes or to be feued or otherwise disposed in any manner whatsoever it shall be competent to the Feuars to position and site and construct such boundary walls or fences or both to the extent of one half their thickness on the feu and other half on the ground adjoining and the

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D 4

D. BURDENS SECTION

ENTRY
NO

SPECIFICATION

walls or fences or both so positioned and sited and constructed shall become mutual, the joint property of the Feuars and of the Superiors or of the feuar or feuars or disponee or disponees of such adjoining ground when the same is developed by the Superiors for building purposes or feued or disposed, and the Superiors, if they develop the adjoining ground for building purposes or the feuar or feuars or the disponee or disponees of such adjoining ground shall be taken bound to pay to the Feuars one half of the value of such mutual walls or fences or both and to relieve the Feuars of one half of the expense of maintaining such mutual walls or fences or both but no claim shall be competent to the Feuars against the Superiors for any part of the expense of making or maintaining such boundary walls or fences or both except where the Superiors themselves develop the said ground for building purposes; And where a wall or fence or both shall have been erected by the feuar or feuars or disponee or disponees of any such adjoining ground to the satisfaction of the Superiors or by the Superiors themselves, for separating his or their ground from the feu, the Feuars shall be bound to pay to the feuar or feuars or disponee or disponees of such adjoining ground or to the Superiors one half of the value of such wall or fence or both and to relieve the feuar or feuars or disponee or disponees of such adjoining ground or the Superiors of one half of the expense of maintaining such wall or fence or both in all time coming;

SEVENTH

The Feuars shall be bound to insure against loss or damage by fire all buildings on the feu while in course of erection and after completion in all time coming and that with an insurance company approved of by the Superiors for at least a sum equal to the purchase price thereof or the full rebuilding value whichever shall be the greater and to pay the premiums thereon and regularly to produce to the Superiors, if and when required, the policies and premium receipts and in the event of the Feuars failing at any time to keep up the insurance or to exhibit the policies or the premium receipts, if and when required, the Superiors shall be entitled to effect such insurance and the Feuars shall be bound to repay to the Superiors all sums advanced by them for the purpose of effecting and maintaining the insurance with interest at the rate of Five per centum per annum from the date of advance till repayment and in the event of any of the buildings being destroyed or damaged by fire or from any other cause, the Feuars shall be bound to restore the same within two years, as it stood before destruction or damage or to erect a dwellinghouse of at least similar capacity and standard, which, taking account of alterations in standards, materials, construction or design, may then be a comparable structure to that which it replaces, and in the case of fire the sums recovered from the insurance company shall be applied at the sight of the Superiors exclusively in rebuilding or restoring the same as aforesaid, and in any case, such building shall be re erected or restored so as to be in all respects consistent with the Feu Disposition or other Writ;

EIGHTH

No other buildings or erections of any kind whatsoever other than those authorised under the Feu Disposition or other Writ whether permanent or temporary shall be placed on the feu and no alterations or additions whatsoever to the buildings therein authorised shall be made and neither the external appearance nor the internal division or arrangement of the same shall be altered, without the previous written approval and consent of the Superiors, declaring, however, that such consent shall not be unreasonably withheld by the Superiors in the case of buildings, erections, alterations and additions consistent with the purposes for which the feu is granted;

NINTH

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D 5

D. BURDENS SECTION

ENTRY
NO

SPECIFICATION

The consideration stipulated in the Feu Disposition or other Writ is held to cover the construction of the carriageways, pavements and footpaths (and, if formed a vehicle crossing over the pavement) formed or to be formed ex adverso the feu without, however, implying liability on the part of the Superiors to relieve the Feuar of any of their statutory obligations in relation to roads and streets and others at the instance of the local authority or other appropriate authority which obligations shall be the sole responsibility of the Feuars; Declaring, however, that the Feuar shall also be responsible for the construction to the satisfaction of the Superiors of an adequate vehicle crossing if not provided by the Superiors over the pavement and for the maintenance of said vehicle crossing however provided and of said pavements and footpaths as also for meeting half the cost of maintenance of all roads, streets, and others ex adverso the feu so long and so far as the same are not maintained by the said local authority or other appropriate authority;

TENTH

Whereas the Superiors shall form or cause to be formed or shall otherwise contribute to the expense of forming main drains or common sewers and other necessary works connected therewith or related thereto for the purpose of draining the feu and also other areas of ground feued or intended to be feued or sewage and surface water, the consideration stipulated in the Feu Disposition or other Writ is held to cover the proportion effering to the feu of the expense of or any contribution towards the construction of the said main drains and common sewers and other necessary works and the Feuars shall, so long and so far as the same are not taken over and maintained by the local authority, be bound jointly with other feuars using the same to defray the entire cost of maintaining, upholding and improving the whole of the main drains or common sewers or other necessary works and the flow of sewage and surface water from the same and of any filtration or other purifying operation to which the same may be subjected which cost shall be apportioned among the different feuars using the same at the time as shall be fixed by the Superiors according to the extent of the areas in the different feuing lots connected or intended to be connected therewith; And the Feuar shall be bound to connect the drainage system of the feu therewith to the satisfaction of the Superiors and of the local authority and the Feuars shall be bound to meet the whole expense of making and maintaining and upholding in all time coming to the satisfaction of the Superiors the said connection from the main drains or common sewers or other necessary works; Declaring further that in so far as the said main drains or common sewers or other works hereinbefore referred to are laid or are to be laid within the feu the Feuars shall be bound to afford all reasonable access therefor as also for maintaining, upholding and improving the same as hereinbefore specified and the Feuars shall not at any time cause any building of any type whatsoever to be erected over the line of the said main drains or common sewers and other necessary works;

ELEVENTH

The Feuar shall in all time coming maintain and bear a proportionate share of the cost of maintaining all mutual branch drains, pipes and others serving inter alia the feu along with the whole other users thereof as also an equal share corresponding to the number of properties of all other mutual pertinents or services, the right of disposal of the other halves or other shares of the mutual walls, hedge, fences or others being reserved to the Superiors;

TWELFTH

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TITLE NUMBER FFE800

D 6

D. BURDENS SECTION

**ENTRY
NO**

SPECIFICATION

The Superiors shall have power to alter or abandon, as they shall think fit, their development plan or plans as regards the ground belonging to them, and they shall have power to develop and to dispose of the said ground or any part of it to be used for any purpose or purposes whatsoever, including particularly, but without prejudice to that generality, purposes other than the erection of dwellinghouse, Declaring that no claim or claims for damages or compensation for any loss of amenity or any other loss whatsoever shall be competent to the Feuars against the Superiors in respect thereof; and

THIRTEENTH

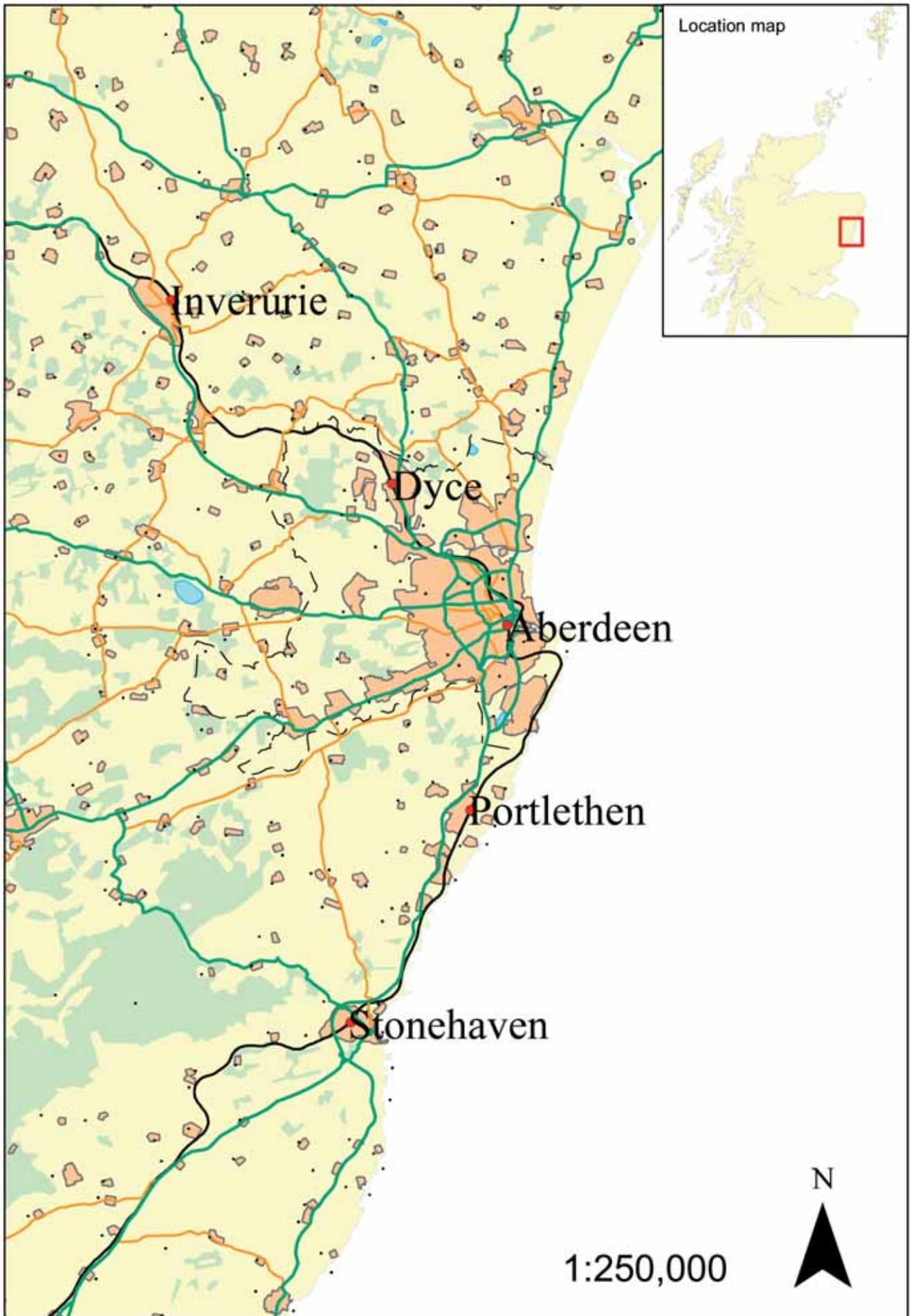
And if the Feuars shall contravene or fail to implement any of the reservations, feuing conditions or others herein contained or contained or validly referred to in the Feu Disposition or other Writ then and in any of these events and notwithstanding any changes of ownership on either or both sides during or since the period or date of default all acts and deeds of contravention and also the feu right granted by the Feu Disposition or other Writ and all that may have followed thereon shall in the option of the Superiors become void and null; and the Feuars shall forfeit all right and title in and to the feu and buildings thereon which shall in that event revert to the Superiors in like manner as if these presents had never been granted and in addition the Feuars shall remain liable to the Superiors for performance of the prestations incumbent on the Feuars under these presents prior to the date of such forfeiture.

- 3** Feu Disposition by Glenrothes Development Corporation to Steven Lawrence Cassells and another, recorded G.R.S. (Fife) 14 Mar. 1986, of the subjects in this Title, contains no additional burdens.

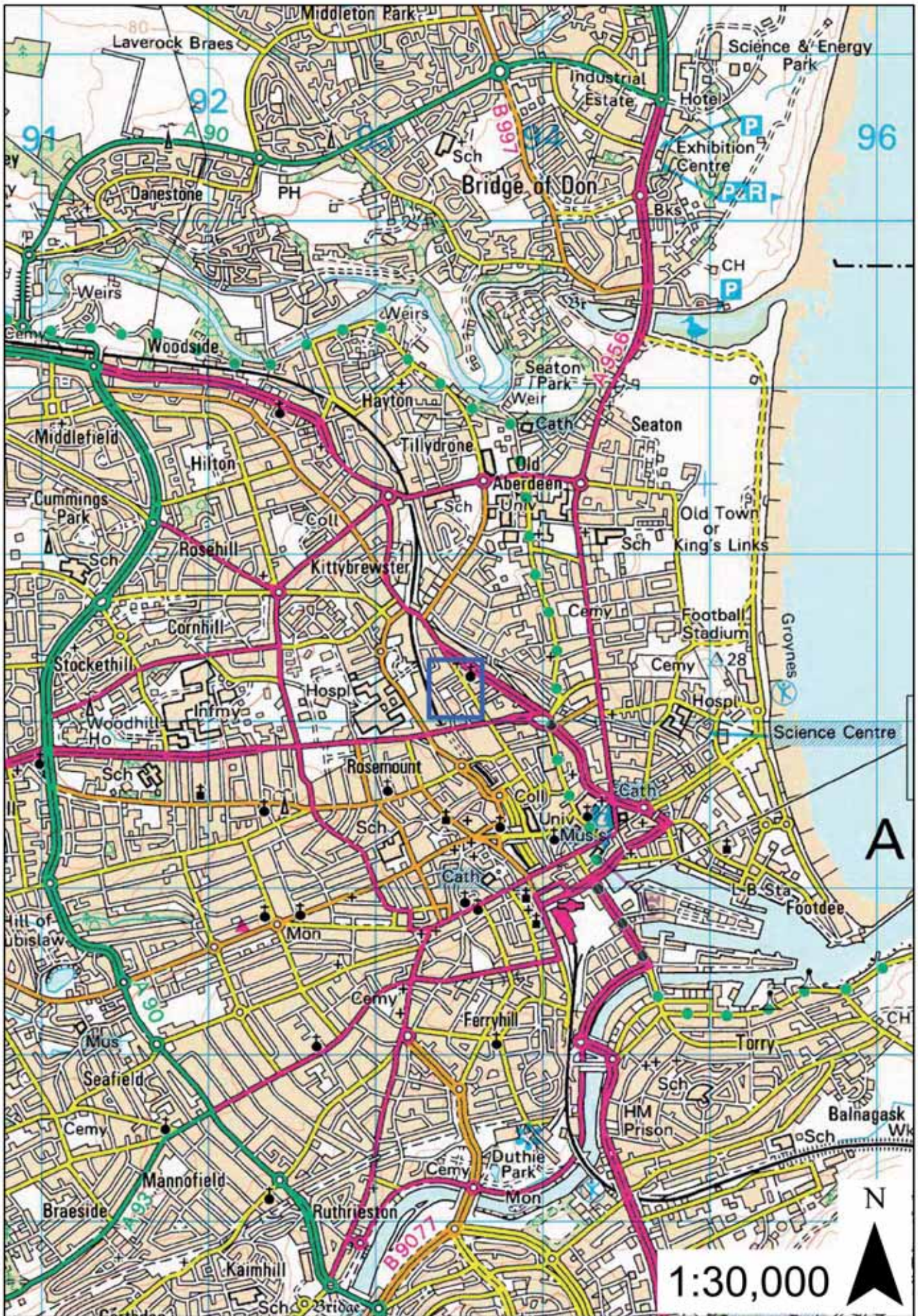
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Appendix F

Extracts from the Index Map



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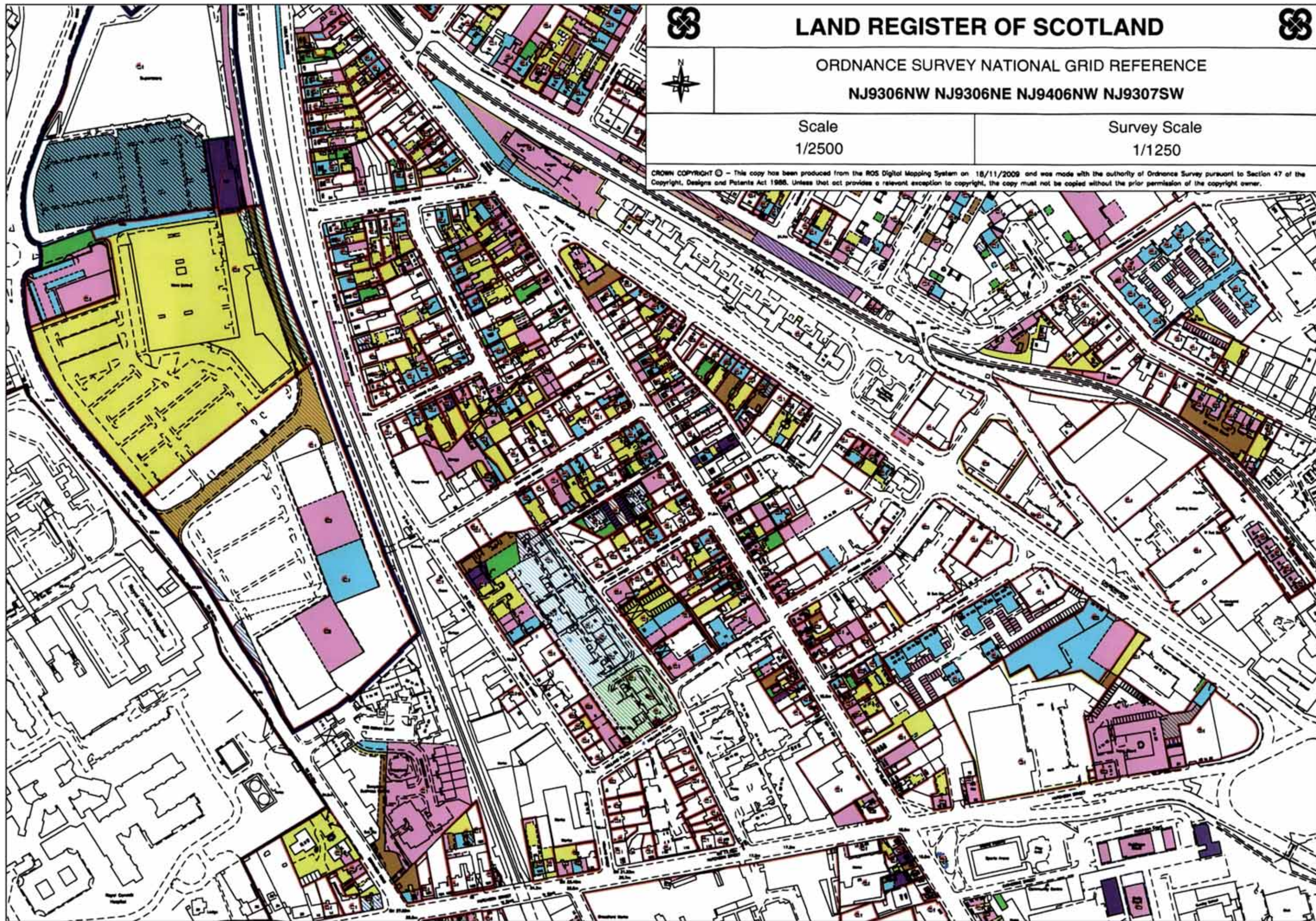
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