



Land Registration etc. (Scotland) Act 2012

2012 asp 5

PART 7

KEEPER'S WARRANTY

Keeper's warranty

73 Keeper's warranty

- (1) The Keeper, in accepting an application for registration, warrants to the applicant that, as at the time of registration, the title sheet to which the application relates—
 - (a) is accurate—
 - (i) in so far as it shows an acquisition, variation or discharge in favour of the applicant, or
 - (ii) in the case of an application under section 27, in so far as it shows the applicant to be the proprietor or proprietor in common, and
 - (b) is not inaccurate in so far as there is omitted from it any encumbrance the inclusion of which is permitted or required by or under an enactment.
- (2) But the Keeper does not warrant that—
 - (a) the plot of land to which the application relates is unencumbered by any public right of way,
 - (b) the land is unencumbered by a path delineated in an order 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),
 - (c) the 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),
 - (d) a right appearing on the title sheet as a pertinent is of a kind capable of being a valid pertinent,
 - (e) 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,
 - (f) the applicant has by registration acquired a right to mines or minerals,

- (g) a registered lease has not been varied or terminated without the variation or termination having been registered,
 - (h) the title sheet to which the application relates is accurate—
 - (i) in so far as it shows an acquisition, variation or discharge more extensive than the deed registered bore to effect, or
 - (ii) in the case of an application under section 27, in so far as it shows the applicant to be the proprietor or proprietor in common of a plot of land more extensive than the plot registration of which the application bore to effect, or
 - (i) alluvion has not had an effect on a boundary.
- (3) The benefit of warranty extends to persons to whom the benefit of warrandice by the granter of a deed would extend.
- (4) In relation to an application for registration of a deed relating to a title condition, references in subsections (1) and (2) and in section 78 to the applicant are to be read as references to the person benefiting from the deed given effect to.
- (5) The Keeper does not warrant as provided for in subsections (1) and (2) where the application for registration is accepted by virtue of section 43.
- (6) This section is subject to sections 75 and 76.

74 Keeper's warranty on registration under sections 25 and 29

- (1) The Keeper, on registering a plot of land by virtue of section 25 or under section 29, warrants to the owner that, as at the time of registration, the title sheet of the plot—
- (a) is accurate in so far as it shows the owner to be the proprietor or proprietor in common, and
 - (b) is not inaccurate in so far as there is omitted from it any encumbrance the inclusion of which is permitted or required by or under an enactment.
- (2) Subsections (2), (3) and (5) of section 73 apply to warranty under this section as they apply to warranty under that section.
- (3) Subsection (2) of section 73 is subject to the following modifications—
- (a) for paragraph (h) substitute—
 - “(h) in the case of registration by virtue of section 25, the title sheet is accurate in so far as it shows the owner to be the proprietor or proprietor in common of a plot of land more extensive than the area of land which forms the subjects of the lease, to which the deed relates or, as the case may be, in respect of which the subordinate real right is constituted,
 - (ha) in the case of registration under section 29, the title sheet is accurate in so far as it shows the owner to be the proprietor or proprietor in common of a plot of land more extensive than the plot the Keeper sought to register, or”,
 - (b) references in that subsection to—
 - (i) the application are to be read as references to the registration by virtue of section 25 or under section 29,
 - (ii) to the applicant are to be construed as references to the owner.
- (4) This section is subject to sections 75 and 76.

75 Extension, limitation or exclusion of warranty

- (1) The Keeper may—
 - (a) if satisfied (having regard to sufficiency of evidence as to title) that it is appropriate to do so, grant more extensive warranty than is provided for in section 73 or 74, or
 - (b) if not satisfied as to the validity of the acquisition, variation or discharge mentioned in section 73(1)(a)(i) or that the applicant or owner is the proprietor as mentioned in section 73(1)(a)(ii) or 74(1)(a)—
 - (i) grant less extensive warranty than is so provided for, or
 - (ii) exclude warranty.
- (2) For the purposes of subsection (1), the Keeper must have regard to any relevant caveat placed on the title sheet by virtue of section 67.
- (3) Where warranty is granted or excluded under subsection (1), the Keeper must give effect to the grant or exclusion by entering a statement describing it in the title sheet.
- (4) If an entry made in the title sheet on an application being accepted by virtue of section 43 ceases to be provisional, the Keeper may—
 - (a) grant such warranty as the Keeper (having regard to sufficiency of evidence as to title) considers appropriate, and
 - (b) give effect to the grant by entering a statement describing it in the title sheet.

76 Variation of warranty

- (1) This section applies where warranty is—
 - (a) as provided for in section 73 or 74,
 - (b) granted under section 75(1)(a), (b)(i) or (4)(a), or
 - (c) excluded under section 75(1)(b)(ii).
- (2) The Keeper may, if the Keeper comes to be satisfied (having regard to sufficiency of evidence as to title) that it is appropriate to do so, grant—
 - (a) warranty as provided for in section 73,
 - (b) less extensive warranty than as so provided, or
 - (c) more extensive warranty than as so provided.
- (3) The Keeper may not, under subsection (2), grant warranty that is less extensive than the warranty which was originally provided for or granted as mentioned in subsection (1) (a) or (b).
- (4) For the purposes of subsection (2), the Keeper must have regard to any relevant caveat placed on the title sheet by virtue of section 67.
- (5) Where the Keeper grants warranty or more extensive warranty under subsection (2), the Keeper must—
 - (a) unless the warranty granted is warranty only as provided for in section 73, give effect to the grant by entering a statement describing it on the title sheet, and
 - (b) remove any statement previously entered under section 75(3) or (4)(b).

Claims under warranty

77 Claims under Keeper's warranty

- (1) The Keeper must pay compensation for loss incurred as a result of a breach of the Keeper's warranty.
- (2) Liability to pay such compensation arises only if and when the inaccuracy giving rise to the claim for compensation is rectified.
- (3) A claimant is not required to exhaust other remedies before making a claim to such compensation.
- (4) Payment by the Keeper under this section does not extinguish any rights which the claimant may have against another person in respect of the loss compensated.
- (5) But it is a condition of any such payment that the claimant assign any such rights to the Keeper.

78 Claims under warranty: circumstances where liability excluded

The Keeper has no liability to pay compensation by virtue of section 77(1)—

- (a) if the inaccuracy is consequent upon an error in the cadastral map and that error was made in reasonable reliance upon the base map,
- (b) if the existence of the inaccuracy 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 the 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 111,
- (d) in so far as the claimant's loss could have been avoided by the applicant, owner or claimant taking certain measures which it would have been reasonable for the applicant, owner or 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.

79 Claims under warranty: quantification of compensation

- (1) Compensation payable by virtue of section 77(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 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 runs from the date mentioned in subsection (3) until the sum in question is paid.

- (3) The date is—
- (a) where the sum is payable other than by virtue of subsection (1)(b), the date mentioned in subsection (1)(a),
 - (b) where the sum is payable by virtue of subsection (1)(b)(i), the date on which the claimant paid the sum in question, and
 - (c) where the sum is payable by virtue of subsection (1)(b)(ii), the date on which the loss was sustained.
- (4) The Scottish Ministers may by regulations make provision as to the rate of interest payable by virtue of subsection (2).