



# Land Registration (Scotland) Act 1979

## 1979 CHAPTER 33

### PART II

#### INDEMNITY IN RESPECT OF REGISTERED INTERESTS IN LAND

#### 12 Indemnity in respect of loss

- (1) Subject to the provisions of this section, a person who suffers loss as a result of—
  - (a) a rectification of the register made under section 9 of this Act;
  - (b) the refusal or omission of the Keeper to make such a rectification;
  - (c) the loss or destruction of any document while lodged with the Keeper;
  - (d) an error or omission in any land or charge certificate or in any information given by the Keeper in writing or in such other manner as may be prescribed by rules made under section 27 of this Act,shall be entitled to be indemnified by the Keeper in respect of that loss.
- (2) Subject to section 14 of this Act, the Keeper may on registration in respect of an interest in land exclude, in whole or in part, any right to indemnity under this section in respect of anything appearing in, or omitted from, the title sheet of that interest.
- (3) There shall be no entitlement to indemnity under this section in respect of loss where—
  - (a) the loss arises as a result of a title prevailing over that of the claimant in a case where—
    - (i) the prevailing title is one in respect of which the right to indemnity has been partially excluded under subsection (2) above, and
    - (ii) such exclusion has been cancelled but only on the prevailing title having been fortified by prescription ;
  - (b) the loss arises in respect of a title which has been reduced as a gratuitous alienation or fraudulent preference, or has been reduced or varied by an order under section 6(2) of the Divorce (Scotland) Act 1976 (orders relating to settlements and other dealings);
  - (c) the loss arises in consequence of the making of a further order under section 5(2) of the Presumption of Death (Scotland) Act 1977 (effect on

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property rights of recall or variation of decree of declarator of presumed death);

- (d) the loss arises as a result of any inaccuracy in the delineation of any boundaries shown in a title sheet, being an inaccuracy which could not have been rectified by reference to the Ordnance Map, unless the Keeper has expressly assumed responsibility for the accuracy of that delineation;
- (e) the loss arises, in the case of land extending to 2 hectares or more the area of which falls to be entered in the title sheet of an interest in that land under section 6(1)(a) of this Act, as a result of the Keeper's failure to enter such area in the title sheet or, where he has so entered such area, as a result of any inaccuracy in the specification of that area in the title sheet;
- (f) the loss arises in respect of an interest in mines and minerals and the title sheet of any interest in land which is or includes the surface land does not expressly disclose that the interest in mines and minerals is included in that interest in land;
- (g) the loss arises from inability to enforce a real burden or condition entered in the register, unless the Keeper expressly assumes responsibility for the enforceability of that burden or condition;
- (h) the loss arises in respect of an error or omission in the noting of an overriding interest;
- (j) the loss is suffered by—
  - (i) a beneficiary under a trust in respect of any transaction entered into by its trustees or in respect of any title granted by them the validity of which is unchallengeable by virtue of section 2 of the Trusts (Scotland) Act 1961 (validity of certain transactions by trustees), or as the case may be, section 17 of the Succession (Scotland) Act 1964 (protection of persons acquiring title), or
  - (ii) a person in respect of any interest transferred to him by trustees in purported implement of trust purposes;
- (k) the loss arises as a result of an error or omission in an office copy as to the effect of any subsisting adverse entry in the Register of Inhibitions and Adjudications affecting any person in respect of any registered interest in land, and that person's entitlement to that interest is neither disclosed in the register nor otherwise known to the Keeper ;
- (l) the claimant is the proprietor of the dominant tenement in a servitude, except insofar as the claim may relate to the validity of the constitution of that servitude;
- (m) the claimant is a superior, a creditor in a ground annual or a landlord under a long lease and the claim relates to any information—
  - (i) contained in the feu writ, the contract of ground annual or the lease, as the case may be, and
  - (ii) omitted from the title sheet of the interest of the superior, creditor or landlord,
 (except insofar as the claim may relate to the constitution or amount of the feuduty, ground annual or rent and adequate information has been made available to the Keeper to enable him to make an entry in the register in respect of such constitution or amount or to the description of the land in respect of which the feuduty, ground annual or rent is payable);
- (n) the claimant has by his fraudulent or careless act or omission caused the loss;
- (o) the claim relates to the amount due under a heritable security.

- (4) A refusal or omission by the Keeper to enter in a title sheet—
- (a) any over-feuduty or over-rent exigible in respect of a registrable interest;
  - (b) any right alleged to be a real right on the ground that by virtue of section 6 of this Act he has no duty to do so since it is unenforceable,
- shall not by itself prevent a claim to indemnity under this section.

### **13 Provisions supplementary to section 12**

- (1) Subject to any order by the Lands Tribunal for Scotland or the court for the payment of expenses in connection with any claim disposed of by the Lands Tribunal under section 25 of this Act or the court, the Keeper shall reimburse any expenditure reasonably and properly incurred by a person in pursuing a *prima facie* well-founded claim under section 12 of this Act, whether successful or not.
- (2) On settlement of any claim to indemnity under the said section 12, the Keeper shall be subrogated to all rights which would have been available to the claimant to recover the loss indemnified.
- (3) The Keeper may require a claimant, as a condition of payment of his claim, to grant, at the Keeper's expense, a formal assignation to the Keeper of the rights mentioned in subsection (2) above.
- (4) If a claimant to indemnity has by his fraudulent or careless act or omission contributed to the loss in respect of which he claims indemnity, the amount of the indemnity to which he would have been entitled had he not so contributed to his loss shall be reduced proportionately to the extent to which he has so contributed.

### **14 The foreshore**

- (1) If—
- (a) it appears to the Keeper that—
    - (i) an interest in land which is registered or in respect of which an application for registration has been made consists, in whole or in part, of foreshore or a right in foreshore, or might so consist, and
    - (ii) discounting any other deficiencies in his title in respect of that foreshore or right in foreshore, the person registered or, as the case may be, applying to be registered as entitled to the interest will not have an unchallengeable title in respect of the foreshore or the right in foreshore until prescription against the Crown has fortified his title in that respect, and
  - (b) the Keeper wholly excludes or proposes wholly to exclude rights to indemnity in respect of that person's entitlement to that foreshore or that right in foreshore, and is requested by that person not to do so,
- the Keeper shall notify the Crown Estate Commissioners that he has been so requested.
- (2) If the Crown Estate Commissioners have—
- (a) within one month of receipt of the notification referred to in subsection (1) above, given to the Keeper written notice of their interest, and
  - (b) within three months of that receipt informed the Keeper in writing that they are taking steps to challenge that title,
- the Keeper shall—

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- (i) during the prescriptive period, or
  - (ii) until such time as it appears to the Keeper that the Commissioners are no longer taking steps to challenge that title or that their challenge has been unsuccessful, whichever is the shorter, continue wholly to exclude or, as the case may be, wholly exclude right to indemnity in respect of that person's entitlement to that foreshore or that right in foreshore.
- (3) This section, or anything done under it, shall be without prejudice to any other right or remedy available to any person in respect of foreshore or any right in foreshore.