



# Scottish Law Commission

*promoting law reform*

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION  
NOT FOR PUBLICATION OR BROADCAST  
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## LAND REGISTRATION

The system of land registration in Scotland set up by the Land Registration (Scotland) Act 1979 is examined in a discussion paper issued today by the Scottish Law Commission.

In **Discussion Paper on Land Registration: Registration, Rectification and Indemnity (No 128)** the Commission builds on the proposals for reform of the land registration system which were set out in a previous paper published last year (Discussion Paper on Land Registration: Void and Voidable Titles (No 125)). The new paper focuses on three core matters: registration, rectification and indemnity. A third paper, to be issued later in the year, will consider some miscellaneous issues such as servitudes, overriding interests, caveats and decision-making by the Keeper.

### APPROACH OF THE PAPER

The new paper approaches the topics in two different ways. First, it subjects the existing legislative provisions to detailed analysis in order to identify those provisions which should be included in the proposed new legislation, and those provisions which should be discarded and replaced. Secondly, it proposes the reformulation of the law, old and new, in a manner which is consonant with the more general proposals for reform set out in the first discussion paper.

### SUMMARY OF PROPOSALS

#### The integrity principle

As under the present law, errors in the Register should not affect *bona fide* acquirers. But this principle, which may be called the "integrity principle", requires reformulation as part of the overall reform proposed by the Commission. Two rules are proposed. First, a person shown on the Register as owner of land should, in a question with the acquirer, be taken to have become owner of that land on the date stated on the Register, provided that the person was in possession for a year or other prescribed period. Secondly, an acquirer should take the land free of all real rights other than (i) those which appeared on the title sheet

immediately before registration and (ii) overriding interests. In addition, there should be a new presumption that a person named on the Register as owner of land is in fact such owner.

## **Rectification**

The Commission's overall proposals allow a considerable simplification of the rules of rectification. Where the Register is inaccurate, rectification should in future be available without restriction. In particular the Keeper should be bound to rectify an inaccuracy where requested to do so by a qualified person. The Register is "inaccurate" in the sense meant here where it fails to state the actual legal position. It is no longer necessary to provide special protection for proprietors in possession.

## **Indemnity**

The rules for payment of indemnity are re-cast in line with the Commission's overall proposals. In respect of the acquisition, variation or extinction of real rights, the Keeper should warrant that the rights were duly acquired, varied or extinguished to the extent shown on the Register; and in the case of acquisition he should further warrant that there are no subordinate real rights other than those which appear on the Register, and overriding interests. But no indemnity should be paid without "eviction", that is to say, without the inaccuracy being founded on by a third party.

Indemnity should be paid to a person who loses rights as a result of the operation, in favour of another person, of the integrity principle (described above). In addition, indemnity should cover reasonable costs incurred in a successful application for rectification.

As under the current law, indemnity should be paid in respect both of the principal loss and, subject to some qualifications, of any consequential loss which was reasonably foreseeable. Interest should be payable from the date when the loss was incurred, and any property rights which were lost should be valued as of the same date. The Keeper should cease to be liable to pay the judicial costs of an unsuccessful claim for indemnity.

It should also be made clear that no indemnity is due in respect of an inaccuracy of which an acquirer was previously aware.

## **Registration**

Although the Register should continue to show only current rights and their current holders, information as to previous rights and holders should be available on request.

Donations of unregistered land should induce first registration.

Applications in respect of a *non domino* conveyances should continue to be refused if in competition with an existing "live" title.

Land and charge certificates should cease to be issued.

## **NOTES TO EDITORS**

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is Lord Eassie, a senior Scottish judge. The other Commissioners are Professor Gerard Maher QC, Professor Kenneth G C Reid CBE, Professor Joseph M Thomson and Mr Colin J Tyre QC.

2. Further information can be obtained by contacting Mr John M Dods, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: [info@scotlawcom.gov.uk](mailto:info@scotlawcom.gov.uk)).

3. The paper may also be viewed on our website at [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk) or purchased from TSO Scotland Bookshop.