



REGISTERS OF SCOTLAND  
Executive Agency



Information about Scotland's land & property

## Udal Law and the Land Register: A Guide to the Keeper's Policy

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## Unwritten udal titles

A good udal title can be obtained without written documents of title prior to the application for first registration, although instances of such are very rare nowadays. An applicant for first registration of a udal title of this kind should submit evidence that the former proprietors possessed the property without challenge. Affidavits from the successive proprietors of the land can be useful, but are unlikely to be sufficient on their own. Other evidence might comprise family trees; affidavits from third parties, especially those whose titles adjoin the applicant's land; old plans; historic books; parish records; or searches for adjoining recorded or registered titles. The Keeper is willing to deal with each case on its merits.

## The foreshore

The Crown has no assumed prior right to the foreshore under udal law. At the coastlines of Orkney and Shetland, a proprietor's title will normally include the adjacent foreshore. Recorded titles often describe the foreshore verbally, rather than by reference to a deed plan. While the Ordnance Survey map shows the lower limit of the foreshore as being the mean low water mark of ordinary spring tides (MLWS), the assumption is that a udal title extends 'to the lowest ebb'. It is thought that the 'lowest ebb' may fall at a lower point than the MLWS. However, the Keeper is not in a position to assess the precise extent of the 'lowest ebb' in an individual case.

When dealing with an application for registration of a title in Orkney or Shetland which includes foreshore, the Keeper will proceed as follows (except where the landward title derives from a Crown grant or there is evidence that the title to the foreshore is held separately from the title to the adjacent land):

1. The registered title will be mapped to extend to the MLWS as shown on the current OS map.
2. In view of the potential for the title to extend to a lower limit than the MLWS, a note in the following style will be added to the Property Section of the title sheet: *NOTE: The subjects in this title include foreshore. While the title plan shows the extent of the foreshore as being bounded by the mean low water mark of ordinary spring tides, the subjects extend to the lowest ebb.*
3. Indemnity will be excluded in respect of any alteration of the title boundary resulting from *alluvio*. (This policy is applied throughout Scotland and is described in more detail in the May 2002 issue of the Journal of the Law Society of Scotland at page 158).

## Ancillary rights in the foreshore

Udal title to the foreshore brings with it a variety of ancillary rights, such as wreck and seaware. Where these rights are expressly included in the prior titles, they will be set out verbally in the Property Section of the Title Sheet. If the prior titles are silent with regard to ancillary rights, then the Title Sheet will similarly be silent.

## Fishing rights

Salmon fishings in the waters of Orkney and Shetland do not vest in the Crown and the Court of Session has decided (*Lord Advocate v Balfour* 1907 SC 1360) that they are not capable of being held as a separate tenement, whether the adjacent lands are held on udal or feudal tenure. Accordingly, the Keeper cannot accept for registration a conveyance in Orkney or Shetland which purports to deal with salmon fishings as a separate tenement, severed from ownership of the relevant land.