

Your guide to English and Scottish banking and finance terms



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Although many of the legal concepts are similar, there are important distinctions between the law of Scotland and England when it comes to finance transactions. This Guide provides a comparison of terms and expressions and an explanation of some of the key concepts you may encounter in finance transactions with a Scottish element.

Glossary of commonly used terms

English term	Meaning and/or the Scottish equivalent
Assignment	Assignment – the act of transferring rights to incorporeal (intangible) moveable property, or the document transferring such rights. An assignment in security is the only way to take fixed security over these types of rights under Scots law, and must be perfected on “Day 1” by giving notice to the counterparties (see “ Equity ” below).
Assignment of Rents	Assignment of Rents – the method by which fixed security over the right to receive rental income is taken. This must be perfected by intimating the Assignment of Rents to all relevant tenants on Day 1.
Attachment, distress, execution	Diligence – a generic term for various methods of enforcing judgments or unpaid debts in the Scottish courts.
Companies House charge registration	The Companies House charge registration regime is the same throughout the UK.
Easement	Servitude – an obligation or right attached to land.
Equitable title/interest	Beneficial title/interest – there is no equivalent concept of equitable title or interests in property under Scots law, although a similar effect can be achieved by the property owner holding the property in trust for the beneficial (i.e. equitable) title holder.
Equity	There is no concept of equity under Scots law, nor any equivalent concepts of equitable rights or equitable transfers.
Floating charge	Floating charge – a Scottish floating charge is a statutory (rather than common law) creation, under s.462 of the Companies Act 1985. While floating charges in Scotland are broadly the same as in England/Wales, there are some key differences such as no automatic crystallisation; no crystallisation by notice; and no ability to appoint an LPA Receiver.
Forfeiture	Irritancy – the forfeiture of a right, usually under a lease, through failure to observe, or contravention of, the terms of the lease or the terms of the law more generally.
Freehold	Heritable – the term freehold is broadly equivalent to heritable title and sometimes referred to as “ownership” or “absolute ownership” in Scotland. When the term “freehold” is used in Scotland, this is generally for the purposes of convenience, as it has no real legal meaning under Scots law.
Full title guarantee	Absolute warrandice – an express or implied personal obligation or warranty of a grantor to indemnify the grantee from anything which conflicts with that right. Most commonly seen in the sale of property or the granting of fixed security over property in Scotland.
Hypothecation	Hypothec – a right in security given over property of a debtor, although (unlike pledge or lien) the creditor does not have possession of the property, which remains with the debtor.
Injunction	Interdict – a temporary remedy granted by a Scottish court forbidding an act or course of action being taken by a party, usually for a limited period of time.



English term	Meaning and/or the Scottish equivalent
Land Registry	Registers of Scotland – there are two registers in relation to property (i.e. land) interests in Scotland: the older General Register of Sasines (broadly equivalent to unregistered property in England/Wales) and the newer Land Register of Scotland. The older General Registers of Sasines is in the process of being phased out.
Leasehold interests	Scots law generally differs between “ Short lease ” and “ Long lease ” interests. Short leases are generally those granted for terms of less than 20 years. They cannot be registered at Registers of Scotland and therefore (other than the rental income streams) have limited security value. Long lease interests of 20 years or more can be registered at Registers of Scotland and therefore have additional security value. It is no longer possible under Scots law to grant a long lease of a residential property, other than in very limited circumstances.
Legal charge/mortgage	Standard Security – the only way in which fixed security can be granted over property (i.e. land or real estate) in Scotland. The fixed security interest is not created until it is registered at Registers of Scotland, and the form of security must broadly follow the style set out in the Conveyancing and Feudal Reform (Scotland) Act 1970.
Legal interest	Real right – a right enforceable against all parties (<i>jus in re</i>), as opposed to a personal right (<i>jus ad rem</i>) which is only enforceable contractually against the obligor.
Legal owner/legal title holder	Heritable proprietor/owner – the person having a right to heritable (land) property, even though his or her title is not complete.
Limitation Act 1980	The Prescription and Limitation (Scotland) Act 1973 is the primary piece of legislation relating to prescription and limitation of rights under Scots law.
LPA Receiver	The Law of Property Act 1925 does not have effect in Scotland, and so it is not possible to appoint an LPA Receiver to enforce security in Scotland. In some limited cases it may be possible to appoint an Insolvency Act Receiver under a Scottish floating charge.
Mortgage	See “ Legal charge/mortgage ” above. A standard security can only be taken over real estate (i.e. land or buildings) under Scots law. In order to take fixed security over other categories of assets in Scotland, these assets must be pledged or transferred in security.
Mortgagee	Heritable creditor – the party to whom a standard security is granted, or, more generally, a security holder.
Notice/notification	Intimate/Intimation – the act of serving notice of the creation of rights on a third party, usually in order to perfect an assignation in security.
Priority notice	Advance notice – advance notices are registered against titles to property in Scotland by the grantor of a deed, and provide the grantee with a 35 day protection period during which they will take priority over competing interests in the property. They are most commonly used in the sale of property or the granting of fixed security over property in Scotland.
Re-assignment	Retrocession/Retroceding – the act of retransferring or re-assigning incorporeal or intangible rights to a debtor or obligor (usually upon the repayment of debt or the expiry of a security period).
Restrictive covenants	Negative real burdens – conditions or burdens on title to property, which run with the title and restrict how the property can be used.
Stamp Duty Land Tax (SDLT)	Land and Buildings Transaction Tax (LBTT) is the equivalent of SDLT in Scotland. Whilst broadly similar in operation there are (as at the date of this glossary) some small differences in the rates of tax payable in respect of certain values of property and second homes/dwellings in Scotland.



English term	Meaning and/or the Scottish equivalent
Set-off	Retention, compensation and the balancing of accounts in insolvency – “set-off” has no technical meaning in Scots law although in practice it is normally used as a rough generic term for these similar but distinct concepts of Scots law.
Share charge	Share pledge – fixed security granted by way of pledge over shares, perfected by the transfer of the shares and registration of the security holder (or its nominee) in the company register of members.
Surety	Guarantor or cautioner – security for a debt or a deed given by one party in respect of the obligations of another.
Surrender	Renunciation – the termination of a lease prior to the expiry of the lease term.
Tort	Delict – a civil wrong created by the deliberate or negligent breach of a legal duty, from which a liability to compensate consequential loss and injury may arise.

This guide is intended as a general guide to the common differences between Scottish and English law and practice and reflects the law as at October 2020. The information and expressions of opinions in this guide are not intended to be a comprehensive study, nor to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Key contacts

If you require advice or further information on any of the matters raised in this update, please get in touch with a member of the team below, or with your usual Shepherd and Wedderburn contact.



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