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Registers of Scotland
Fee Review 2010
Analysis of Consultation Responses



**REGISTERS OF SCOTLAND
FEE REVIEW 2010 ANALYSIS OF CONSULTATION RESPONSES**

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1. Introduction

1. Registers of Scotland (RoS) have conducted a review of the fees that we charge for information and also for recording and registration in the Land Register, Sasine Register and Chancery and Judicial Registers. We undertook public consultation on the proposals arising from this review over the period 21 June 2010 to 10 September 2010 and we are now reporting on the outcome of that consultation. A copy of the consultation document, setting out the proposed changes to the existing fee structure, is available on our website at www.ros.gov.uk/feereview2010.

2. The Consultation Exercise: Consultation Methods

2. As part of the review, a pre-consultation exercise was undertaken to seek the views of the public through their appointed agents, being solicitors and private searchers. RoS Account Managers also contacted other users of our services such as local authorities and the Police. The pre-consultation exercise gathered views on the current fees that RoS charge and on the impact that any potential increase or change in fees would have.

3. The feedback showed that while customers would prefer for there not to be any increase in fees, there was understanding of the need for RoS to recover the cost of providing services. The initial feedback highlighted two changes introduced from previous reviews that customers wished to retain. These were the retention of no fee being charged for a nil return on Registers Direct and the retention of fixed fees for Charges. The consultation paper that was issued proposed to retain these changes.

4. Approval was given to RoS by Scottish Ministers to conduct a public consultation. The consultation paper was sent to 179 individuals and organisations by email with 12 paper copies being sent out. It was hosted on the Scottish Government and RoS websites where it received 1028 hits.

5. The distribution list covered all of our key stakeholders and stakeholder groupings with consultees being invited to submit responses on the proposed changes highlighted in the consultation paper. In accordance with Scottish Government guidelines, the consultation paper was accompanied by a covering letter informing consultees on how their responses would be handled. In addition, an article highlighting the consultation was published in the July edition of The Journal and a reminder was included in the August edition.

3. Responses to the Consultation Exercise

6. The consultation exercise generated twenty-four formal responses. Seven respondents did not give permission for the publication of their response. Of these, one respondent indicated that they had no particular comment to make while the remaining six did make substantive comments. This means that we have published seventeen responses.

Transfer Fees

7. The proposal by Scottish Ministers to change the fees the Keeper of the Registers of Scotland (the Keeper) can charge for registration and recording of deeds that transfer an interest in land attracted nine responses. One respondent questioned the proposal that the fee for properties over £1 million would remain unchanged - as these are already set at a relatively high level in comparison to lower value properties - and suggested that there may be a case for charging more to those who can pay more for a property. Another respondent had no objection to the fees but proposed that a greater increase would be preferred to other increases.

8. Four respondents concentrated on the increase in the minimum fee for properties valued under £50,000 from £30 to £60 and from £20 to £50 for Automated Registration of Title to Land (ARTL) applications. They argued that the increase appeared disproportionately high in view of the work involved, especially in the case of ARTL applications. One of these four respondents agreed with the proposal to continue not to differentiate between the fees for a First Registration and other types of transactions but agreed with another two respondents who expressed concern at the reduction in the fee differential for using ARTL. This was seen as not being helpful in promoting the use of ARTL. In contrast, another respondent noted that they did not benefit from ARTL as most of their property was in the General Register of Sasines.

9. One respondent appreciated the need for RoS to recoup its running costs but had concerns about the impact on the wider property market and on budgets of organisations such as councils. They questioned the comparison with 1995 fees arguing that inflation is built into registration dues as property prices increase. Another respondent thought that, compared to 1995, the rise was not high but it was a lot to be introduced in one year and along with the VAT increase could depress the housing market.

Charges, Miscellaneous Deeds and other Registrations

10. The proposal by Scottish Ministers to retain a fixed fee but to increase it for deeds such as Charges from £30 to £60 and from £20 to £50 for ARTL applications attracted eight responses. Two respondents agreed with the proposal to retain the fixed fee structure. Whereas four believed that the increase to £60 was too large an increase, another noted that they bore comparison to 1995 levels and one thought the proposals reasonable but would prefer greater increases in preference to other proposed changes. One

respondent also welcomed the retention of a lower fee for ARTL applications but said that more information, on whether these increases would stop losses being occurred, was required to say if they are justified.

11. One of the respondents in this area also suggested a change to the way Rectifications are charged. They currently attract the minimum fee but the respondent suggested that the fee be refunded if the error to be rectified has not been caused by the fault of the applicant or their solicitor. Another respondent expressed concern about the impact that the increase in fees would have on multiple assignations and proposed a lower increase or a discount for bulk titles.

12. Two local authorities commented on this area. One commented that the fee increase would have a significant impact on expenditure on recording or registering Discount Standard Securities, Charging Orders and Grants. They also noted that as much of their property is in the General Register of Sasines they don't benefit from ARTL. The other local authority noted that although it was not a particularly large amount, the fee increase would impact on grant recipients as the RoS fee tends to be deducted from the sum paid.

Multiple Applications

13. The proposal by Scottish Ministers to remove the provision relating to single transactions effected by more than one deed attracted two responses. One respondent thought that it seemed reasonable but that it would cause confusion and misunderstanding amongst solicitors, which could result in more rejected applications. The other respondent thought that it would have a negative impact on their clients' transactions. They questioned whether RoS would benefit financially from this change.

Rejections

14. The proposal by Scottish Ministers to introduce a £30 fee for rejected applications attracted ten responses. One respondent conceded that it was disappointing that a significant number of applications have to be rejected, many for easily avoidable causes. They went on to note that if the reason given for rejection proved wrong then RoS should provide a refund. Another respondent appreciated the requirement to charge for work and time incurred during the processing of applications that are rejected but called for the availability of checklists to be highlighted.

15. The other eight respondents expressed concerns over the rejection proposal with some being strongly against the measure. Two of the respondents believed that it could potentially lead to the Keeper rejecting more applications rather than requesting the required supplementary evidence to be submitted. Three of the respondents highlighted that in cases where the Keeper makes errors and Land Certificates have to be returned for correction that there will be no reciprocal penalty. Another respondent praised RoS staff and had no problem with most of the increases but thought that the rejection fee would penalise solicitors. They suggested that solicitors

should introduce a double checking system to reduce applications being rejected for basic errors.

16. One respondent believed that there will always be errors and rejections, with conveyancing and RoS regulations being far more complex and confusing than the pre-1979 era. They believed, like another respondent, that the cost of rejections has always been taken into account when fixing registration charges. They also believed that it was a fundamental change with far-reaching consequences beyond RoS and could open the flood gates for other government agencies and similar bodies to charge similar rejection fees.

Cancellations

17. The proposal from Scottish Ministers to change the cancellation fee from £30 to the application fee but capped at £400 received comments from ten respondents. One respondent believed that such a potentially high increase in cancellation fees should be reconsidered as it is unclear why such applications should not be weeded out at the initial check and that it is not always possible for submitting agents to know what is required.

18. One respondent had similar concerns as to rejections in that there would be no similar mechanism for solicitors to charge RoS for errors. Two respondents believed that the cancellation fee should be based on the time expended on it and that it should be discretionary not mandatory. Three respondents believed the cancellation fee should remain at £30 and another two respondents thought the increase to be punitive with a higher fee being seen as excessive and indefensible. The final respondent had concerns about the increase particularly in light of the proposed changes to pre-registration enquiries which they believed could result in more cancellations.

Dispositions Containing Real Burdens

19. The proposal by Scottish Ministers to introduce a £400 supplementary charge for constitutive deeds containing Real Burdens in terms of the Title Conditions (Scotland) Act 2003¹ attracted comments from thirteen respondents. Three agreed that in some circumstances, such as where Real Burdens are being imposed on two or more properties or in a housing development, the most effective way would be by using a Deed of Conditions but questioned if this would be the case if the new Real Burdens were being created over just one property.

20. The ten other responses were strongly against the introduction of the £400 supplementary charge. It was highlighted by many of them that if it was a small piece of ground that was being sold from a larger area the best way of doing this would be a Disposition. One of the respondents could not understand why the Keeper would want to encourage Deeds of Conditions at the expense of Dispositions. It was also highlighted by six respondents that

¹ asp 9

constitutive deeds containing Real Burdens are permitted by legislation and an alternative method for RoS to pursue would be to have this legislation changed.

Registers Direct

21. The setting of the fee for the proposed service of making Sasine deeds available via Registers Direct at £3 was welcomed by two respondents. One respondent was pleased to note that it is proposed to retain the nil charge for a Registers Direct search that produced a nil return but another believed this should incur a charge. Another respondent thought that the increase from £1.80 to £3 for searches on Registers Direct was a slight increase of not great consequence but had some quality issues with Registers Direct.

22. Six public organisations did say that the general rise in Registers Direct fees would have an impact on their budget. Four of the organisations raised the possibility of certain types of organisations being given free or discounted access to Registers Direct. Some of the organisations raised an issue about having to search all counties and the cost involved. Another organisation raised the possibility of a discount for regular users and the idea of some information being made available at a minimum fee with this being off-set against some of the higher fee proposals.

Customer Service Centre Charges

23. The proposal by Scottish Ministers to introduce a charge for the cost of RoS staff conducting Registers Direct searches attracted four responses. One of the respondents did not object to the charges but two of the respondents highlighted that it would increase their costs. One of these respondents thought that it could possibly result in changed working practices suggesting that, to reduce costs, the fee be levied per request rather than per search. They asked for clarity on whether charges will be affected by the time taken or whether in the case of a list of individual names to be searched would the fee be charged per person or on the enquiry. The final respondent didn't believe that it was clear why there should be a different fee for searches requested in person as it involved the same work as other searches.

Personal Presentments

24. The proposal by Scottish Ministers to introduce an additional fee of £15.00 plus VAT for applications that are personal presentments at RoS Customer Service Centres attracted two comments. One respondent asked for clarity on the interaction of the rejection fee and the personal presentment fee, contemplating what fee would apply if a personal presentment was rejected. They also asked for clarification on how a personal presentment containing one deed but affecting multiple titles would be charged. The other respondent noted that due to the location of their office they rarely used the personal presentment service.

Pre-Registration Enquiries

25. The proposal by Scottish Ministers to introduce a £50 fee for pre-registration enquiries attracted fourteen responses, all of which were against the proposal. The general view expressed in these responses was that the pre-registration service is valuable to both RoS and customers. The view is that the Keeper provides a good service in this area that helps to sort out problems at an early stage, thus cutting down on the time and cost involved to everyone.

26. If a charge was to be introduced, the view is that this would deter many solicitors from using the service. This may result in more applications being submitted with problems that would have to be researched by RoS staff at a later date. There was also some concern expressed about the cost to clients and the possibility of this charge resulting in more rejections, with RoS collecting increased revenues from these rejections. One respondent was concerned that if this fee was introduced it would result in other service providers charging an enquiry fee. Another respondent thought that, due to the law becoming more complicated, it was a naïve assumption that enquiries would drop over time.

Reports

27. The proposal by Scottish Ministers to increase the fees for the provision of Land Register Reports in line with costs did not attract any comment.

Miscellaneous Services

28. The Miscellaneous Services section of the consultation paper dealt with the fees charged for copies and extracts as well as the fees for the provision of certain types of information to customers. The proposed fees for the provision of this information attracted no comment. The fees for copies and extracts attracted two responses. One respondent believed that that the doubling of the fee for an Office Copy to £30, with the presumed savings with digitalisation, seemed high.

29. The other respondent believed that the increase in fees for copies and extracts as well as for Land Register Archive information would have a big impact on their costs and on the resultant service that they could provide. They were also concerned about a possible additional handling charge in this area and suggested that the Land Register Archive be made available on Registers Direct to reduce costs.

Chancery and Judicial Registers (CAJR)

30. The proposal to retain the current CAJR fees, which are already set at a cost recovery basis was noted by one respondent but otherwise did not attract any comment.

General Comments

31. There were a number of more general comments in relation to the consultation paper. One respondent believed that at a time when the housing market is struggling Scottish Ministers should be looking to stimulate the market by reducing costs rather than increasing them.

32. One respondent was appreciative of the need for RoS to be self-funding and the impact of the downturn in the housing market but could not agree with all of the proposed changes. Two respondents believed that RoS should be looking at introducing efficiency savings with smarter ways of working, better asset management and addressing quality issues such as those with Registers Direct. They believed that it would be inappropriate for those who pay the fees to bear the cost of an inefficient service.

33. One respondent believed that if the changes to Rejections, Dispositions with Real Burdens and Pre-Registration Enquiries are introduced then it would severely damage the excellent working relationship between RoS and solicitors and thus the efficiency of the deeds registration procedure.

34. The proposal by Scottish Ministers to retain Scotland's House Prices as a free service attracted comments from two respondents. Both believed that Ministers should consider charging for this service. It was believed that imposing a charge on the use of Scotland's House Prices data would be more advantageous than some of the other proposals contained within the consultation paper.

35. Copies of the seventeen responses for which we received permission to publish will be placed on the RoS website at www.ros.gov.uk/feereview2010 and are also available from the Scottish Government Library.

4. RoS View of Consultation Responses

36. RoS is committed to consulting its customers on any changes affecting the provision of its services. We are grateful to those who have responded and the comments received are appreciated and valued. The responses provide a good indication of the views of those with an interest in our proposals. Comments have been received from a variety of sources including our main stakeholder groups such as the Law Society of Scotland and the Council of Mortgage Lenders. We have also had responses from solicitor groups, as well as from local authorities and other public sector organisations and individual solicitors. Taken together these respondents represent a large part of our customer base.

5. Next Steps

37. The fee changes require certain statutory procedures to be followed. We will now be putting these in hand and we expect that the Scottish Ministers will make a Fee Amendment Order based on the fees consulted upon and the responses received. It is anticipated that any change in the fees that RoS charge would take effect from the first quarter of 2011.

