

Final Business and Regulatory Impact Assessment

Title of Proposal:

Land Registration etc. (Scotland) Bill

Purpose and intended effect

Objectives

1. The passage and implementation of this Bill would implement recommendations contained in Report Number 222 by the Scottish Law Commission (SLC) on Land Registration. With five broad policy objectives, the Bill:

- provides for the eventual completion of the Land Register by increasing the number of triggers for a first registration and providing for voluntary registrations and Keeper-induced registrations;
- introduces a system of “advance notices” for conveyancing transactions, which will remove the risk of losing title to a property between the settlement date and the registration date (which risk is currently underwritten by insurance);
- introduces amendments to the Requirements of Writing (Scotland) Act 1995 (the 1995 Act) to allow for electronic conveyancing and electronic registration;
- seeks to re-align registration law with property law by, for example, adjusting the circumstances in which a person can recover their property rather than only receive compensation from the Keeper; and
- continues and improves the system for land registration in Scotland. It replaces the Land Registration (Scotland) Act 1979 (the 1979 Act). The Bill places on a sound statutory footing the administrative practices of the Keeper of the Registers of Scotland that have evolved in practice since the passing of the 1979 Act.

Background

2. The Land Register of Scotland was set up under the 1979 Act as a replacement for the General Register of Sasines, which has been in use as the property register for Scotland since 1617. The new register was brought into operation gradually, county by county, over the period from 1981 to 2003. 55% of titles and 20% of the land mass of Scotland are now covered by the Land Register. The change of register marked a change of registration system. The Register of Sasines is a register of deeds, while the Land Register is a register of title, and, rather than simply recording a deed, registers its legal effect and the legal effect of all previous relevant deeds. The result is a guaranteed statement of title for each registered property, making it

simple to discover ownership of land and the encumbrances to which it is subject. It is a map-based register of property titles, backed up by a State guarantee. After nearly 30 years of operation, the Land Register currently encompasses over 55% of property titles, representing around 21% of the landmass of Scotland.

3. The Land Register and General Register of Sasines each comprise 33 counties and the trigger for transferring a property from the General Register of Sasines to the Land Register is usually the first sale for a valuable consideration. As the pace of bringing properties into the Land Register is dictated by actual sales of property, there are many properties that remain within the General Register of Sasines and may do so for some considerable period. The result is that only a proportion of Scottish property is contained in the Land Register and not all property owners enjoy the benefits of a registered title.
4. The 1979 Act is relatively short, containing only 30 sections and four schedules, and its brevity has caused uncertainty in several areas concerning property rights, leading to disputes in law and litigation that has challenged aspects of the operation of the system of land registration. There is currently an underlying tension between property law and registration law.
5. While the 1979 Act set up a scheme of indemnity, so that those who had suffered loss resulting from inaccuracies in the Land Register could be compensated, experience has demonstrated that there are problems with the application of the scheme.
6. Having recognised the need for reform and at the behest of the Keeper of the Registers of Scotland (the Keeper), the SLC undertook a review of the 1979 Act and issued three discussion papers (for details, see Consultation). Following consultation on these, the SLC published their Report on Land Registration (Scot Law Com No 222, 2010), which includes the draft Bill, in February 2010.
7. Registers of Scotland (RoS) commissioned a report by BiGGAR Economics Limited to assess the economic impact and contribution to the Scottish economy arising from a secure system of land registration and this was annexed to the SLC Report.

Rationale for Government intervention

8. The Land Register is operated under statutory authority and the proposals recommended by the SLC can only be implemented by government intervention in the form of introducing the proposed Land Registration (Scotland) Bill into the Scottish Parliament. Without this legislative step, it would not be competent for RoS to implement the proposals.
9. The Land Register is of fundamental economic importance to the people of Scotland and its business community. It provides clarity of ownership through secure and reliable property rights. The proposals in the Bill identify areas where there are deficiencies in the law and seek to amend these, strengthening the existing system of land registration. By doing this, the proposals are not only entirely complementary to the target in the National Performance Framework of raising GDP growth but are an essential part of this process.

10. The work of RoS is essential to the Scottish economy: security of land ownership is a prerequisite for anyone wishing to invest in property. This includes commercial investors and the Scottish house-buying public, as well as major landowners such as local authorities and the Forestry Commission. All these bodies rightly demand security of land and property rights. The proposed amendments to the legislation and the practical process of land registration will assist in ensuring that Scotland is an attractive place to do business in Europe and will reinforce the long-standing benefits of our systems of registering title to land.
11. BiGGAR Economics' analysis has demonstrated that there will be significant economic benefits if the ongoing transition from the General Register of Sasines to the Land Register can be completed to achieve a single, conclusive map-based register. This will not be possible unless the Bill is enacted.
12. The Bill will permit the development of electronic conveyancing, which again is expected to bring significant economic benefits and ancillary environmental benefits.
13. The Bill introduces a system of advance notices that will protect from fraud those transacting with property. The Bill also introduces new statutory methods of dealing with land where there is currently no title and this will enable land to be brought back into economic use, helping to encourage investment.
14. The Bill proposes establishing a historical aspect to the Land Register. This will preserve information for posterity and will benefit not only historians but all those interested in exploring the rich heritage of our country.
15. The overarching principles of the Bill will ensure that the services offered by RoS are high quality, continually improving, efficient and responsive to people's needs. By enhancing the systems of registration, a large volume of information will be available electronically, removing all barriers of location. RoS will make accessible a huge amount of up-to-date, accurate information.
16. As with any Act that creates a new system, the period since the introduction of land registration has seen litigation that has highlighted flaws in the current legislation. The Bill will address these issues and strengthen the land registration system.
17. The proposals in the Bill arise from the experience gained in the practical process of land registration and the problems arising through the implementation of the 1979 Act. The process of consulting about reform began with three discussion papers produced by the SLC in 2004 and 2005. Information gained from the consultation process led to the SLC Final Report on Land Registration in February 2010. In the foreword to the Report, the SLC notes that: "our recommendations are evolutionary: the great achievements of the 1979 Act should be consolidated and developed. We think the result should be one of the best land registration systems in the world".
18. The Bill forms an important part of an on-going process of legislation that is reforming and modernising land law in Scotland. The proposals contained in the Bill address real issues and seek to provide a sound basis that will take the process of

land registration into the 21st century and help to ensure that Scotland is an attractive place to do business and where the property rights are protected by law.

Consultation

19. In 2001, RoS, with the agreement of the Scottish Ministers, asked the Scottish Law Commission (SLC) to review the 1979 Act. This led to three consultative Discussion Papers: "Land Registration: Void and Voidable Titles"; "Land Registration: Registration, Rectification and Indemnity" and "Land Registration: Miscellaneous Issues", which were issued in 2004 and 2005. The Commission's final "Report on Land Registration" was published in February 2010. This report, which incorporates a draft Bill, formed the basis of a consultation conducted by RoS in autumn 2010.
20. RoS produced and distributed a consultation questionnaire together with a link to the draft Bill to stakeholders, including law firms, individuals, local authorities and Government departments. This contained 48 questions on the main policy points proposed by the SLC. The consultation document, together with the primary distribution list of consultees, was published on the RoS website. A total of 42 stakeholders submitted detailed responses, many of whom gave their consent for publication. Those who responded came from a wide range of professional backgrounds and interest groups. Responses were received from all sectors of stakeholders that are expected to be affected by the Bill. Consultees support the SLC's proposed reforms by a substantial majority.

Within Government

21. Responses to the consultation were received from The Queen's and Lord Treasurer's Remembrancer (QLTR), the Crown Estate Solicitor in Scotland and the Scottish Court Service. The QLTR is responsible for administering land that has fallen to the Crown as either *ultimus haeres* or *bona vacantia*. QLTR requested notification prior to registration of a prescriptive claim over land to which he may have an interest. In policy terms, this is in keeping with the Bill, i.e. that all potential owners of an area of land have the opportunity to transact with or veto an application for a prescriptive claim. This is now expressly stated in the Bill.

Councils

22. SOLAR Conveyancing Working Group, representing the legal departments of Scottish Local Authorities, was concerned that the operation of advance notices, provided for in the Bill, would interfere with the registration of charging orders. In response, they were informed that charging orders could also be protected by an advance notice. This has made an administrative amendment to the Bill necessary, namely that advance notices can apply to unilateral deeds.

Public Consultation

23. Before producing the report on Land Registration, the SLC produced three discussion papers:

- Discussion Paper on Land Registration: Void and Voidable Titles (Scot Law Com DP No 125, 2004)
[http://www.scotlawcom.gov.uk/download_file/view/125/;](http://www.scotlawcom.gov.uk/download_file/view/125/)
- Discussion paper on Land Registration: Registration, Rectification and Indemnity (Scot Law Com DP No 132, 2005)
[http://www.scotlawcom.gov.uk/download_file/view/132/;](http://www.scotlawcom.gov.uk/download_file/view/132/) and
- Discussion Paper on Land Registration: Miscellaneous Issues (Scot Law Com DP No 141, 2005)
[http://www.scotlawcom.gov.uk/download_file/view/141/.](http://www.scotlawcom.gov.uk/download_file/view/141/)

24. These discussion papers were prepared to canvas the views of any interested parties on the proposed amendments to Land Registration that were addressed therein. The discussion papers were circulated widely to interested parties and were available on the SLC's website and for purchase through TSO. The consultation process carried out by the SLC on their discussion papers is vital to their work. The comments enable the SLC to draw upon the experience and expertise of others involved and interested in the particular area of law under review.

25. The proposals in these documents were generally supported by the respondents. There were 14 written comments on Discussion Paper No.125, 11 on Discussion Paper No. 128 and 13 on Discussion Paper 130. Representations were also received from the legal profession through the Law Society of Scotland, the Faculty of Advocates, the Scottish Law Agents Society, Judges of the Court of Session and the Society of Writers to HM Signet.

26. As part of the consultation process, a link to the Draft Bill was sent to 70 Consultees. We received 39 written consultation responses from our stakeholders. We received responses from local authorities, QLTR, Crown Estates, lending banks, law firms, the various law societies and faculties, utility companies and interested members of the public. We have also met with SOLAR, COSLA, Ordnance Survey, QLTR, Crown Estate Solicitor for Scotland and the National Records of Scotland, amongst others, as part of our ongoing consultation and engagement process. The final report of the Scottish Law Commission is available to view on the SLC website (<http://www.scotlawcom.gov.uk/publications/reports/2010-present/>).

Business

27. A number of legal firms responded to the SLC's Discussion Papers. In addition, the SLC had specific dialogue with Homes for Scotland in relation to their proposals for provisional shared plots. After further consideration, and much discussion with stakeholders, this policy is to be removed from the Bill. Provisional shared plots are not workable and have been made unnecessary by modern conveyancing practices adopted by developers since the PMP Plus case. Homes for Scotland have not been further consulted on the Draft Bill as they act through legal agents who have represented their concerns on their behalf.

28. For this consultation exercise we engaged with the following business interests:

Legal Profession

29. Law firms are businesses. Most law firms in Scotland are either small or micro businesses. The consultation was issued to the Law Society of Scotland as the representative body, to local law faculties, and to other collective bodies such as the Scottish Law Agents Society. In addition, we have held individual meetings with a cross-section of firms, including but not limited to: a specialist conveyancing practice, a traditional chamber practice, a rural firm and a city-based commercial firm.

Lending Industry

30. The lending industry is UK-wide and only Scottish lending operations will be affected by this consultation. The consultation was issued to the Council of Mortgage Lenders as the industry body and we have consulted representatives of large PLCs and mutual lenders and also with smaller players.

Private Search Firms

31. Private search firms search and provide information from public records, including the Land Register. Most are members of the representative Society of Scottish Searchers to whom the written consultation was issued. These firms would be affected by any change in the way RoS make information available to the public.

Legal Software Suppliers

32. The draft Bill itself has few implications for the legal software sector. However, if in due course subordinate rules are made under the Bill, these are likely to contain forms and styles that may need to be integrated into legal software products. RoS issued the consultation to the industry body, the Legal Software Suppliers Association, and obtained a written response from "the market leading provider of survey and mortgage evaluation software in the UK" on the SLC draft Bill but for the reasons already stated we decided it would not be proportionate to proceed with an individual meeting at this stage.

Options

Option 1: Do nothing.

33. Under this option the Bill would not proceed. Land Registration would continue under the statutory framework of the 1979 Act. The benefits discussed under Option 2 would not be realised.

Option 2: Introduce a New Bill

34. This option is to adopt the SLC's recommendations and promote a new Land Registration Bill. The sections of the Bill that will provide the greatest benefit are as follows:

Completion of the Land Register

35. The Bill proposes that completion of the Land Register will be accelerated by:

- giving the Keeper a power to instigate registration;
- adding new triggers that will induce registration of a property into the Land Register; and
- making provisions for the eventual closure of the General Register of Sasines to the intake of any deeds.

36. The secured property rights that land registration affords are of economic importance to Scotland and are fundamental to the workings of the Scottish property investment market. Without these proposed changes, the Land Register is still likely to be incomplete in another 400 years time. Furthermore, completion of the Land Register will mean that all land in Scotland is mapped in terms of title boundaries with all the title data easily available online. This does not just carry advantages for those in the world of conveyancing but for any party seeking information as to who has what rights in which land e.g. public bodies, creditors and local amenity associations.

37. The costs associated with completion of the Land Register are likely to be significant and RoS would undoubtedly face an additional workload but there is also potential cost saving to RoS once the work has been carried out. Completion of the Land Register would simplify system requirements and enable automated procedures that could deliver efficiencies when compared to current practices. Work to identify the costs and savings will be carried out prior to the introduction of the Bill.

Advance Notices

38. The Bill introduces a system of advance notices to Scotland. Most other title registration systems have such a system in place. This system is designed to replace the Letters of Obligation system, which acts as a guarantee by a grantor's solicitor in favour of the grantee in a conveyancing transaction. The purpose of an advance notice is to cover the gap period between the delivery of a deed and its registration. In this period, there is a risk that the grantor of the deed may become insolvent and a risk that the grantor grants a deed to another party; both may affect the right of the grantee.

39. The advance notice will be a notice placed on the Land Register notifying that the owner of the property (X) is intending to grant a deed to another (Y). The notice has the effect of giving the grantee (Y) a protected period 35 days to register the deed. The grantee's title is protected from the risks outlined above.

Electronic Conveyancing

40. All land contracts and most land deeds are excluded from the benefits of new technology by the terms of the Requirements of Writing (Scotland) Act 1995. With a few exceptions, the provisions of this Act require a hard-copy document that is authenticated in a physical format. A limited form of electronic conveyancing and registration is currently permitted using RoS's Automated Registration of Title to

Land IT system (ARTL). This system allows solicitor firms to convey Land Registered properties electronically and submit the deeds for registration electronically using digital signatures.

41. RoS, the conveyancing profession and mortgage lenders all agree that a move to enable electronic conveyancing would have considerable benefits. The Bill proposes that it should be permissible to create and authenticate land deeds in electronic format. This would:

- meet external stakeholder expectations;
- increase speed of processing and communication;
- give increased scope for automation within conveyancing firms, lending institutions and RoS, increasing efficiency and leading ultimately to reduced costs for consumers;
- comply with EU and UK policy on developing electronic commerce; and
- be consistent with Scottish Government policy on making Scotland an attractive place to do business.

42. In addition to the power to provide for electronic registration of land deeds, the Bill makes it possible for a later statutory instrument to provide for all documents caught by the Requirements of Writing (Scotland) Act 1995 (such as wills) to be capable of electronic registration.

Cadastral Map

43. The Bill provides for the reformation of the Land Register's mapping by the introduction of a Cadastral Map. The Cadastral Map will cement the principle that there will be no registration without mapping. The result will be every plot of land which forms a registered title will be represented by a unit on the Cadastral Map. Eventually, all the landmass of Scotland will be represented by a unit on the map; and in the future it will be easy to identify the owner of any area of land in Scotland.

Shared Plot Title Sheets

44. The provisions in the Bill for Shared Plot Title Sheets introduce a new approach for the registration of areas of land that are owned in common. A separate cadastral unit and a separate title sheet for a common area will be created for areas that are owned in common between multiple proprietors. This title sheet will simply list the title numbers of the sharing plots. The title for the individual properties will include a reference to the shared plot Title Sheet, which will result in the ownership of the right to the common area being included in this title. The combination of this and the improved mapping requirements will reduce uncertainties as to the extents and proprietorships of shared areas.

Acceptance and Rejection of Application for Registration

45. The Bill contains three proposals that will provide a statutory basis governing the content of applications and the deeds contained therein.

- The Bill creates a rule that registration must be authorised by an enactment. This

rule creates certainty about what can be registered and preserves the integrity of the Land Register as a record of real rights. It enables the Keeper to reject unacceptable applications, for example where a deed is invalid.

- All deeds submitted for registration must be valid and probative. This clarifies and gives a legislative basis for the safeguards already employed to ensure land is not registered without right or on the basis of unsatisfactory evidence and removes the need for the Keeper to exercise discretionary powers. Statutory rules will govern deeds granted by a person without title to the ground in question. The Bill sets up conditions that give the Keeper a statutory basis to decide if the application should be accepted for registration. These also safeguard any true identifiable owner of the property.
- A 'one-shot' principle is proposed. This places the onus on those applying for registration to ensure their applications are complete before they are submitted for registration and would give the Keeper a statutory power to refuse to accept additions to incomplete applications, the processing of which is a drain on RoS resources.

Effect of Registration and rectification of inaccuracies

46. In order to re-align the existing effect of land registration with the general rules of property law, the Bill provides that registration of an invalid deed will not in itself confer the relevant right affected by the deed. This change in the effect of registration means that administrative error or error induced by forgery does not of itself deprive the true proprietor of his or her rights.
47. In respect to rectification, the Bill provides that an inaccuracy is constituted in the Land Register where the Land Register fails to reflect the true legal position. The legislation then places a duty on the Keeper to rectify all demonstrable inaccuracies. This change removes some of the obstacles that often prevent the Keeper rectifying, resulting in an inaccurate Register.

Guarantee of title

48. The 1979 Act introduced to Scotland for the first time a state guarantee of registered titles. This protects those transacting with properties from latent invalidities in deeds and from errors. It supports the 'curtain principle', which permits the solicitor acting for a proposed purchaser or secured lender to rely on the terms of the Title Sheet in question. Experience since the introduction of the 1979 Act has shown that there are some problems in the detail of the current system that has led to disputes, litigation and, in some cases, the feeling that the present rules result in unreasonable outcomes.
49. Under the current legislation, if a deed is registered that contains inaccuracies or errors, or is in fact invalid, the effect of registration can be to cure these deficiencies. The effect can also be to deprive someone with good title of their land. The way the current legislation works is to protect the registered proprietor's title. The other party is likely to be compensated by a payment from the Keeper, termed indemnity.

50. Under the proposed Bill, registration of a defective deed would not itself transfer ownership and once an error appears on the face of the Land Register, if the registered proprietor possesses for a prescribed period of time (one year) and then conveys on to a third party in good faith, registration of the deed in favour of that third party has the effect of realigning the parties' rights to what they would have been if the Land Register had been accurate. If the problem comes to light in the prescribed period, the true owner of the land retains their right to the land regardless of what the Land Register says.

51. The simplification in conveyancing and the resulting cost savings that flow from the curtain principle should be retained in the vast majority of cases. However, unlike the present system, 'true' owners would not normally be irremediably deprived of ownership as soon as an inaccurate deed is registered. Rather, before deprivation of ownership occurs (in favour of a party who can also claim title), there would need to have been the combination of a second transaction taking place involving reliance on the Land Register and possession by other parties for the prescribed period.

Archive record

52. The Archive Record currently consists of all historic and current deeds on which the terms of the Title Sheets in the Land Register are based, along with copies of any other relevant documentation that has been submitted with an application for registration. The Bill introduces legislation to regulate the Archive Record, making it officially part of the Land Register and to improve the search-ability of the Record. The obvious benefits these provisions bring, including the ability to obtain official extracts of deeds held on the Record, should come at little expense since the Archive Record is unofficially already in existence and already enabled with some search functions.

Analysis

Sectors and groups affected

53. The Bill will impact on all owners of heritable property in Scotland and tenants in long leases that are registered in the Land Register. There will also be substantial implications for solicitors, the conveyancing industry and mortgage lenders. The change in legislation and the impact on internal processes will also have a substantial impact on RoS.

Completion of the Land Register

54. Significant costs will be incurred in completing the Land Register, as the process of completing an application for First Registration is labour-intensive and requires highly-experienced staff. However, once property is in the Land Register, the time taken by the Keeper's staff to complete subsequent applications for registration can be reduced by up to 75%. Automated processes can further reduce the amount of time required to process an application and turn-around times will be reduced. Completion of the Land Register will also provide a single source of information for anyone wishing to search for property records in Scotland.

Disputes

55. The Bill strengthens the legislative basis of the current land registration system and removes many uncertainties. It is therefore reasonable to assume the number of disputes will decrease. BiGGAR Economics estimate that increased certainty over property rights could result in savings of £810,000 per annum in litigation costs. While it useful to note this, the estimate is thought to be highly speculative.

Keeper's Guarantee of Title

56. The proposed changes will simplify the current indemnity scheme and provide greater clarity on the rules of the scheme. It is estimated that this would deliver annual savings of 10% of indemnity costs. At current levels, this would result in a saving of £40,000 per annum.

Advance Notices

57. Introducing a system of advance notices will introduce a low-cost, easy-to-operate solution to cover the gap risk in conveyancing transaction. Advance notices provide greater protection to the house purchaser than the current system of letters of obligation. It will also be possible to use an advance notices to protect most deeds presented for registration, including high value commercial conveyancing.

One-Shot principle

58. The one-shot principle proposed will enable the Keeper to refuse to accept additional material in relation to defective or incomplete applications, reducing the requirement to deal with some applications more than once and making savings in administrative costs for RoS and conveyancing professionals.

Prescriptive Claimants

59. The Bill will enable land that is not used and where there is uncertainty of ownership to be put back into economic use. It will also provide for statutory rules governing the acceptance of *a non domino* applications for registration and the way in which such applications will be reflected in the Land Register. With around 50 applications to register *a non domino* dispositions annually, along with 598 pre-registration enquiries received by RoS in 2009, the provisions will have a positive impact on the use of RoS staff resource and also that of solicitors.

60. The Scottish Vacant and Derelict Land Survey 2009 showed 10,863 hectares of derelict and urban vacant land, of which 12% (1,322 hectares) had unknown ownership. There is significant potential economic benefit from bringing this land into use and there may also be environmental benefits as a significant proportion of derelict land is contaminated and returning it to use would prompt remediation. BiGGAR Economics estimate that bringing one-third of derelict sites back into economic use would have an economic impact of around £32 million in increased value to the economy. This figure is worth noting, but it is highly speculative.

Information Provided to Public Sector

61. The economic benefits of efficiency savings and collection rates for local authorities were quantified in the Property Ownership Service Transforming Government Feasibility Survey, where an increase to 80% coverage of the Land Register was thought to increase the benefits associated with the National Property Ownership Service by almost £9 million. This information is worth noting, but is highly speculative.

Information Provided to Private Sector

62. The Bill makes no changes to the procedures or rules that govern the information that can be made available to private sector organisations and therefore no impact has been calculated. However, as the coverage of the Land Register grows, it is likely that there will be more requests for information from the private sector.

Electronic Conveyancing

63. The greater efficiency of electronic conveyancing is likely to reduce human error and increase business efficiency, resulting in more prompt updating of the Land Register and associated reductions in administrative and business costs for solicitor firms.

Costs Associated with Changes

64. As well as strengthening the foundations of the land registration system, the Bill proposes a number of changes to the Land Register and its operation. As with any change to any system, there are likely to be short-term costs involved in introducing the reforms, for RoS, conveyancing solicitors and their clients.

RoS Costs

65. By far the two largest costs of the Bill come from the acceleration of the transfer of titles from the General Register of Sasines to the Land Register and the advance notice scheme. The other costs of the Bill are significantly smaller. The overall cost of the Bill will increase the costs of RoS by around 6% (based on the current RoS cost base of £69million). It is assumed that the fees set by Scottish Ministers for the registration of advance notices will cover RoS' costs. RoS will seek to cover its other increased costs through the efficiency gains it intends to make through the introduction of new systems and processes.

66. The cost implications from the Bill can be split into four parts;

- the modernisation of the Land Registration legislation;
- completion of the Land Register;
- Advance Notices; and
- electronic conveyancing and electronic registration.

SUMMARY

67. The following table provides a summary of the known additional capital costs

associated with the Bill:

Part of the Bill	Costs to Registers of Scotland
Modernising the Law	nil
Completing the Land Register	nil
Advance Notices	£49,500
Electronic documents and electronic registration	Unknown

68. The following table provides a summary of the known additional annual costs (in the first three years) associated with the Bill:

Part of the Bill	Costs to Registers of Scotland
Modernising the Law	£436,000
Completing the Land Register	£2,665,000
Advance Notices	£751,000
Electronic documents and electronic registration	nil

Costs to business

Solicitor Training Costs

69. Law firms concerned with conveyancing are the businesses that will be directly impacted by the Bill. The registration of property deeds is required in order for the effect of the deeds to be given effect to. Therefore solicitors and their support staff will have to ensure they are familiar with and able to practice within the new legislation.

Training on new legislation

70. With the introduction of any new legislation, solicitors will have to familiarise themselves with the changes to the law. It is anticipated that at the time the new legislation is commenced there be a range of lectures, seminars, academic papers

etc. available to solicitors to facilitate training on the changes. Solicitors holding a practicing certificate in Scotland have to undertake 20 hours of Continuing Professional Development (CPD) a year, consisting of a minimum of 15 hours group study and up to five hours of private study. The training that solicitors undertake on the new legislation will form part of their annual CPD requirement. Any costs that solicitors incur in meeting their CPD requirements form part of the cost of being a solicitor. There should be no additional cost burden placed on solicitors as a result of the training on the new legislation. In fact, it is likely that RoS will provide a series of training events for solicitors free of charge. The cost of this training to RoS would fall within the normal free training costs which RoS provides to solicitors.

71. There are 10,380¹ members of the Law Society of Scotland with practicing certificates. The Law Society have estimated that about 35 - 40% of solicitors will undertake training in relation to the Bill and on average they would commit four hours of annual CPD time to the new legislation.

Solicitor System Cost

72. Many solicitors use case management systems to improve the quality of the service offered to clients; manage time more effectively; improve organisation of cases and staff time spent on each; and reduce administrative/transaction costs and errors. Ultimately, these systems aim to increase productivity and improve the service offered and can in the long term provide savings.
73. The Bill could encourage the further adoption of such systems by solicitor firms, especially with the advent of electronic conveyancing. These systems typically have installation and set up costs (of perhaps £2,000 to £3,000 (BiGGAR report)) and then a small variable cost per transaction, which is generally passed onto the client. Approximately 10% of the firms have these systems already in use; the cost of the remaining 90% of conveyancing firms (estimated to be 860 in Scotland) of installing a case management system would amount to an estimated £1.5 to £2.5 million (BiGGAR Report).
74. These costs are not necessarily additional costs. If firms want to take full advantages of the opportunities for efficiency savings associated with e-enablement and remain competitive in the market, it is this rather than the introduction of Bill that will increase the adoption of these systems by solicitors firms. The Bill would only compel firms to become e-enabled if electronic conveyancing was made compulsory, the Bill does not prescribe this.

Scottish Firms Impact Test

75. Firms were selected to represent views from different sectors - creditors, rural chamber practice; re-mortgage business; private searcher company and title insurer.

¹ Annual Report of the Law Society of Scotland October 2010

76. Twenty Firms were asked if they would like to participate in the Business Regulatory Impact Assessment. Specifically, law firms in Inverness and Oban were approached but did not wish to meet with us. The firms were emailed with a request to meet, of which the following ten were met with at their premises:

- A & B Matthews;
- Miller & Bryce;
- Scottish Building Society;
- Marjory MacDonald;
- Royal Bank of Scotland;
- Pagan Osbourne;
- RA Direct;
- First Title;
- Aberdeen Considine; and
- Cullen Kilshaw.

77. The following questions were asked:

- 1) *Do you perceive that any of the provisions will have an impact on the competitiveness of your firm?*
- 2) *Will the provisions have any negative impact on you as a firm in terms of cost?*
- 3) *Will the provisions have any positive impact on you as a firm?*
- 4) *Will the provisions impose any additional costs on your firm?*
- 5) *Can you foresee any cost savings for your firm from the new legislation?*
- 6) *As a whole, do you view the provisions contained in the draft Bill as positive or negative?*

78. A table indicating the responses to the questions appears in the appendix. 1.

General summary

79. There was a feeling that the costs incurred through the Bill provisions would be minimal and the benefits would likely to be seen in the long term rather than the short term. The reaction to the Bill proposals was fairly neutral tending towards the positive.

80. There were queries regarding advanced notices; the quality of mapping; concern over the closure of the General Register of Sasines and the possible increased costs of re-mortgages when that happens.

81. The Bill allows for the Keeper to set fees and it will be a matter of policy as to whether voluntary registrations are actively encouraged or whether Keeper-induced registration is initiated. There was some speculation as to whether advanced notices

would reduce costs, as the insurances Solicitors take out cover more than letters of obligation.

Issues covered:

Prescriptive claimants

82. The insurance company First Title were very concerned over the changes in procedures for accepting *a non domino* titles. First Title expressed the view that the provisions for notification would have a direct negative effect on their business. A large part of their business is providing indemnity insurance for *a non domino* titles that the Keeper has registered and excluded indemnity over. One of the conditions for providing this insurance is that the true owners should not be contacted. Also, as the provision would substantially reduce the number of *a non domino* titles being registered, this would result in there being a smaller market for them to provide insurance for.

83. There were no other concerns expressed over the changes in the Bill to this part of legislation and its impact on business for legal firms or creditor stakeholders.

Advance notices

84. There was some scepticism over the role of advance notices. For businesses concerned primarily with re-mortgaging transactions, they are seen to be over-engineered. Letters of obligation are not necessary in these transactions; however, it is envisioned that lenders will insist upon advance notices being registered, thus incurring a new expense for these businesses.

85. There were also doubts expressed over whether advance notices would be an adequate replacement for the Letters of Obligation system. The advance notice system is generally seen as an added cost to the solicitor firms.

Completion of the Land Register

86. There was concern that the closing of the General Register of Sasines would mean that standard securities would induce a First Registration, with the ensuing costs of title examination and higher fees for registration. It was pointed out that the closure of the General Register of Sasines is not likely to be for some time.

87. It is not possible to say what, if any, extra cost may be incurred. This will depend on future policy and fee setting.

88. The completion of the Land Register was seen as an ultimately good goal. Conveyancing should be made easier with one register and all titles registered. In the future, it is envisioned more paralegals will be involved in conveyancing, thus reducing the cost to businesses and their customers.

Electronic-conveyancing and electronic services

89. The response was general acceptance of new formats and realisation of the

advantages they can bring with regard to time saving, cost saving and accessibility of information.

Cadastral map

90. There was one concern over the completion of the map and how any "gaps" in land coverage would be dealt with. There were no concerns expressed over the changes in the Bill to this part of legislation with regard to its impact on business.

Shared plot title sheets

91. The shared plot title was seen as giving greater certainty of ownership. There were no concerns expressed over the changes in the Bill to this part of legislation with regard to its impact on business.

'One-shot' principle

92. There was concern expressed over the 'one shot' principle when applied to complex titles. In these cases, it is sometimes difficult for the solicitor to determine all the relevant deeds. The rejection of applications incurs costs. Firms were reassured that the Keeper will retain discretion to requisition appropriate information rather than return applications as incomplete. One solicitor even saw a business opportunity as a referral point for other solicitors in complex cases.

State Guarantee of Title and Inaccuracies

93. There were no concerns expressed over the changes in the Bill to these parts of the proposed legislation with regard to its impact on business.

Other concerns

94. There was concern expressed that the Keeper's monopoly position should not be abused when fees are set by Scottish Ministers.

Competition Assessment

General

95. The Bill, and the changes to practice therein, is specific to firms dealing with Scottish property transactions and will apply to all firms equally regardless of their geography.

96. Lenders will see no significant impact on their business. They stand to benefit from the advanced notice system as it will give added security to their dealings. Some increased costs to solicitor firms will be passed on to the customer; others will be absorbed. Either way, every business should be equally affected

97. The re-mortgage market could be affected by the introduction of advance notices.

Advance notices make the lending process less risky for the lender but may push up the costs to the Solicitor firm and, by extension, the public. Whether it will have such an effect is unknown as it has not been possible to quantify the costs of the existing system and the re-mortgage market is in a downturn.

98. Insurance companies such as First Title may experience a slight downturn in firms taking out policies but most major policies cover more than letters of obligation (which advance notices may replace). Commercial transactions are unlikely to be affected. Other insurances, such as indemnity insurance relating to *a non domino* titles, will be affected. The insurance company requires non disclosure to the "true owner" for the policy to be valid. The Keeper will require that disclosure in the terms of the new legislation.

99. Commercial ventures that seek to make use of abandoned land may find the new prescriptive claimants' provisions more restrictive and the process of laying claim to such land more time consuming and costly. However, the process should result in a more secure title and less chance of a lengthy court case in the future

Competition Filter questions

100. This part of the assessment identifies possible restrictions on competition in markets resulting from the policy proposals by answering the following questions:

Will the proposal directly limit the number or range of suppliers? For example, will it award exclusive rights to a supplier or create closed procurement or licensing programmes?

No

Will the proposal indirectly limit the number or range of suppliers? For example, will it raise costs to smaller entrants relative to larger existing suppliers?

No

Will the proposal limit the ability of suppliers to compete? For example, will it reduce the channels suppliers can use or geographic area they can operate in?

No. E -services and e-conveyancing will open up new possibilities in this regard as geographic location will not be significant.

Will the proposal reduce suppliers' incentives to compete vigorously? For example, will it encourage or enable the exchange of information on prices, costs, sales or outputs between suppliers?

No

The answers to these Office of Fair Trading (OFT) competition filter questions have established that the preferred policy option is unlikely to have a significant impact

on competition. We assert that this policy will not limit the number or range of suppliers directly or indirectly nor will it limit the ability or reduce incentives of suppliers to compete vigorously.

Test run of business forms

101. The style and substance of the forms used by RoS for application for registration and reports from the Land Register are currently governed by the Land Registration (Scotland) Rules 2006. With repeal of the 1979 Act, new Land Registration Rules will have to be formulated and new forms developed. The style and substance of these forms will be included in new Land Registration Rules, which will be introduced by subordinate legislation prior to commencement of the Bill. A test run of the new forms will be carried out at this time

102. Lenders said that new forms would create an administrative cost at the beginning but that this would not be significant.

Legal Aid Impact Test

103. It is not expected that the proposed Bill will have a significant impact on the Legal Aid Fund.

104. From the Scottish Legal Aid Board records, there were 20 cases involving RoS in the last five years (19 Court of Session cases and one Land Tribunal case). Of those cases, 16 were granted a legal aid certificate. However, not all cases that are granted a certificate proceed. The average claim would appear to be for between £4,000-5,000 per case.

105. At the end of the financial year 2010-11, RoS was involved in an average of 65 active cases per year. This compares to 23,000 applications for first registration received that year. This involvement varied from being cited as a defendant to being an expert witness in a procedural case. Not all of these cases go to completion. The total number of cases leading to litigation was 0.3% of the total number of first registration cases processed in that year. Based on the figures given, cases involving legal aid claims would comprise only 5% of that 0.3%.

106. Whether more cases will be brought to court as a result of the provisions in the Bill is hard to judge. This may depend on the interpretation of the "manifest" test for rectifying inaccuracies in the Land Register. If the test requires a court judgment in many cases then it is possible there may be a slight increase in cases going to court and, subsequently, more cases requesting legal aid. However, it should be borne in mind that the overall number of claims for legal aid in relation to property disputes involving the Keeper is low.

Enforcement, sanctions and monitoring

107. The law governing land registration is contained in the 1979 Act. One of the primary purposes of the Bill is to amend and modernise the law of land registration.

The current law prescribes that in order for an owner of heritable property to obtain a real right in their property, they have to register the deeds transferring that property with the Land Register. The Bill does not alter this position. Therefore, the current procedures employed in enforcing and monitoring the process of land registration will not be changed by the Bill.

Implementation and delivery plan

108. In addition to the main provisions for the Land Register, the Bill includes power to make subordinate legislation for the Land Registration Rules, the fees for registration and the form of electronic documents. When the main provisions in the Bill are commenced, the Land Register Rules will also be commenced. The rules will be used to specify much of the detail in relation to the day-to-day running of the register, such as the style and substance of the application forms that are used for registration applications.
109. The fees that are charged by RoS for registering documents and supplying information from the registers are governed by a fee order. The next fee order made by Scottish Ministers in relation to fees will be made under the provision for fees included in the Bill. The Bill includes provisions for electronic conveyancing and registration. The form of electronic documents and the authentication of those documents will be governed by regulations made by statutory instrument by Scottish Ministers. Any subordinate legislation that is made under the terms of the Bill will be subjects to the normal legislative consultation process.
110. RoS envisage that the main provision in the Bill for land registration will be commenced in 2014-15. It is likely that the power to allow for the use of electronic missives in conveyancing transactions will be commenced around that time (depending on the readiness of stakeholders). This would be done to benefit solicitor businesses and will only be carried out after full consultation with the Law Society of Scotland and the legal profession generally. It is not known at this time when the provision which allow for electronic documents, (other than missives and electronic registration), aside from ARTL, will be implemented. When the power to allow these are used they will preceded with full consultation with all relevant stakeholders.
111. On the implementation of the Bill provisions, an initial post-implementation review will be held by the Programme Office of RoS. RoS will thereafter conduct periodic reviews of the effectiveness of the law for the purposes of land registration. In particular, an annual exercise will be undertaken to monitor land registration coverage (although it is not expected that there will be further primary legislation in this area in the short or medium term). It is the intention of RoS to conduct a full Post-Implementation review 10 years after implementation of the Bill. This will focus on the extension of the Land Registration coverage and how the changes to the state guarantee of titles has operated. In addition a review will be undertaken 5 years after commencement to establish if the power to increase the triggers for first registration should be used.

Summary and recommendation

Dismiss Option 1.

112. Option 1 is maintaining the status quo. Although this would have no additional cost, it would bring no improvements. There is also the possibility the General Register of Sasines would never be closed and there would be two land registry systems running indefinitely. The economic benefits resulting from a single conclusive map-based land register cannot be realised unless the Bill is enacted.

Recommend Option 2

113. Option 2 is implementing the new Bill. This will improve the land registration process, ensure the Land Register can be eventually completed, and permit the development of electronic conveyancing. Cumulatively, the policies in the Bill are expected to bring significant economic benefits to the people of Scotland.

Summary costs and benefits

Option 1 costs

114. No improvements. Failure to realise potential of electronic deeds. Missed opportunity for bringing greater clarity to the registration process.

Option 1 benefits

115. No added short-term expense.

Option 2 costs

116. The financial impact of this bill will mainly fall on RoS. The cost of implementing the advance notice provisions will be met by the fees set by Scottish Ministers for this new service. RoS will seek to cover the other costs through the efficiency gains it expects to realise from the introduction of new systems and processes. Businesses and Local Government can expect costs associated with training and fees to register documents and deeds.

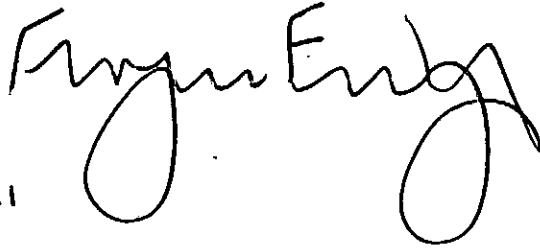
Option 2 benefits

117. The Bill seeks to modernise the law, complete the Land Register, reduce the financial risk in the process of transacting over property, and permit the use of electronic documents and electronic registration. There will be greater transparency over ownership and associated rights and burdens over property. The process of acquiring land is made clearer, with less likelihood of an owner being unknowingly deprived of their land. The improvements and innovations brought about in the new Bill will improve the process of registration that, in turn, will facilitate transactions over land that underpins the Scottish economy.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:



Date: 08/11/11

Minister's name, title etc*

FERGUS EWING MSP MINISTER FOR
ENERGY, ENTERPRISE & TOURISM

Scottish Government Contact point: Gavin Henderson, Registers of
Scotland

Appendix 1

FIRM	sector	location	date	Q1 impact on competitiveness?	Q2 negative impact business?	Q3 positive impact business?	Q4 additional COST to business?	Q5 saving for business?	Q6 general view
Cullen Kilshaw	legal	Borders	08-Apr-11	no	no	possibly	no	no	positive
A&B Matthews	legal	Newton Stewart	06-May-11-	no	neutral	Potential for new business	Not really		positive
Miller & Bryce	searchers	Edinburgh	08-June-11	no	Not really-retraining	Potentially	Not really	no	Neutral/positive
Scottish Building Society	lender	Edinburgh	05 May-11	no	Timing issues	Potentially	yes	no	positive
Marjory* MacDonald	legal	Arbroath	26-Apr-11	-	-	-	-	-	-
Royal Bank of Scotland	lender	Edinburgh	17-Jun-11	no	no	yes	no	no	positive
Pagan Osbourne	legal	Cupar	26-Apr-11	no	yes	yes	yes	no	neutral
RA Direct	legal	Edinburgh	06-Apr-11	no	Depends on cost	yes	Yes-unknown	no	neutral
First Title	insurance	Glasgow	29-Jun-11	no	yes significant	no	Yes-training	no	Negative
Aberdeen Considine	legal	ABN	17-Jun-11	yes	training	possibly	yes	Yes-electronic	Positive

The general questions were not specifically asked at this interview. An extensive general discussion took place covering completion; advance notices; electronic registration; "one shot principle" and mapping.