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Registers of Scotland

Fee Review 2010

Business and Regulatory Impact Assessment



Final Business and Regulatory Impact Assessment

1. Title of proposal

1. The Fees in the Registers of Scotland Amendment Order 2010

2. Purpose and intended effect

• Objectives

2. The objective of the Fees in the Registers of Scotland Amendment Order 2010 is to amend the Fees in the Registers of Scotland Order 1995¹. It will set new fees for the services that Registers of Scotland (RoS) provide. The policy objective of the fee changes is to meet RoS's obligation to recover the full operating costs of the services that it provides. This paper considers the impact on business and other interests of the proposed changes.

• Background

3. RoS is a non-Ministerial Government Department within the Scottish Administration and is headed by the Keeper of the Registers of Scotland, who is responsible for compiling and maintaining 16 public registers relating to property and other legal documents including the General Register of Sasines (established in 1617) and the Land Register of Scotland (established by the Land Registration (Scotland) Act 1979). The work is demand led, fluctuating in response to activity in the property market. RoS handle around half a million registration transactions each year and also make information from the registers publicly available.

4. RoS is self-financing, being funded by the fees that are charged for recording, registration and for providing information from the registers.

• Rationale for Government intervention

5. Statutory responsibility for the setting of fees rests with Scottish Ministers. The fees that RoS charge are required to be calculated on the principle of cost recovery. This derives from section 25 of the Land Registers (Scotland) Act 1868², which provides that "the amount of fees so fixed shall be no greater than is reasonably sufficient for defraying the expenses of the department of the Keeper, including the expenses of the improvement of the systems of such registration and recording".

6. The fees must also be in line with the requirements of the Scottish Public Finance Manual, which states that "the standard approach to setting charges for public services (including services supplied by one public sector organisation to another) is full cost recovery".

¹ S.I. 1995/1945

² c. 64 as inserted by section 23 of the Land Registration (Scotland) Act 1979 c.33

7. The Keeper announced in the 2010-13 Corporate Plan that she intended biennially to conduct a review of both information and registration fees to ensure that the fees charged were within the above requirements.

8. Prior to the Fees in the Registers of Scotland Amendment Order 2010 the fees that RoS charge for registration and recording were set out in the Fees in the Registers of Scotland Amendment Order 2006³, which amended the Fees in the Registers of Scotland Order 1995. The 2006 Order was intended to reduce fees in such a way as to reduce RoS's annual income by at least 26% and was introduced as a deliberate measure to reduce the reserves then held.

9. The fees for information were set out in the Fees in the Registers of Scotland Amendment Order 2009⁴, which also amended the 1995 Order. The fees introduced in 2009 represented a reduction of 45% in information fee income and were designed to reflect costs against volumes at that time.

10. In the period since the 2006 and 2009 Amendment Orders there has been a dramatic change in the housing market and in the wider economy. The reduction in fees that Scottish Ministers introduced in 2006 and 2009, combined with the fall in house prices and the volume of sales, has resulted in RoS incurring substantial annual losses. These are much larger than had been planned and are not sustainable in the medium to long term. In order to maintain the service that RoS provide to customers and to invest in the future, a review of fees was undertaken to re-establish full cost recovery. As well as conducting this fee review, RoS are also undertaking a wider financial sustainability review that will seek to introduce greater efficiencies to RoS.

3. Consultation

• Within government

11. Ministerial approval was given to RoS by the Cabinet Secretary for Finance and Sustainable Growth and the Minister for Enterprise, Energy, and Tourism to conduct the consultation. Amongst the consultees were local authorities, the Land Registries in England and Wales and in Northern Ireland, Her Majesty's Revenue and Customs, the Keeper of the Records of Scotland, and Transport Scotland. A number of these bodies submitted a response during the consultation period which were considered by Scottish Ministers and they will be involved in future consultations.

³ S.S.I.2006/600

⁴ S.S.I. 2009/171

• Public Consultation

12. 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 fees that RoS charge and on the impact that any potential increase in fees would have.

13. The feedback in general 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 feedback highlighted that customers wished to retain three changes introduced by previous reviews. The first was the retention of no fee being charged for a nil return on Registers Direct; the second was the retention of fixed fees for Charges; and the third was free house price searches. The fees consulted upon proposed retaining each of these changes.

14. RoS is committed to consulting its customers on any changes affecting the provisions of its services. Approval was given to RoS by Scottish Ministers to conduct a public consultation. The consultation took place for 12 weeks between 21 June 2010 and 10 September 2010. The consultation paper was emailed to 179 individuals and organisations and 12 paper copies were sent out. It was also hosted on the Scottish Government and RoS websites and attracted 1028 hits. An article highlighting the consultation was published in the July edition of The Journal and a reminder was included in the August edition.

15. The distribution list covered all of RoS 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.

16. The consultation exercise generated twenty-four formal responses. These responses were considered by Scottish Ministers prior to their approval of the Registers of Scotland Fee Review 2010 Consultation Report which has been published on the RoS website at www.ros.gov.uk/feereview2010. The Consultation Report sets out all of the proposed changes and the Fees in the Registers of Scotland Amendment Order 2010 is based on the Consultation Report.

• Business

17. There are three main areas of business impacted by the fee changes. These can be grouped together as the legal profession, the lending industry and firms of private searchers. These groups were all involved in the consultation.

18. 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 and to other collective bodies such as to local law faculties. The consultation was also highlighted in The Journal which is the monthly magazine of the legal profession in Scotland. Responses were received from representative groups as well as from individual solicitors.

19. The lending industry is UK-wide but 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 they submitted a response. The consultation was also issued to the main lenders that operate in Scotland.

20. The other main business area that RoS interacts with is firms of private searchers. These businesses search and provide information from public records, including the Land Register. All of the main firms of private searchers in Scotland were issued with a copy of the consultation.

4. Options

21. Prior to undertaking the consultation, RoS considered alternative options for its fee structure. It looked at the option of doing nothing as well as introducing a new fee structure.

Option 1: Do nothing and remain with status quo

22. RoS is self financing and has a responsibility to set fees at a level of full cost recovery. During the housing market boom RoS generated substantial profits and made a conscious decision to set fees at a loss-making level to reduce reserves. This led to the 26% annual reduction in income from registration fees in the 2006 Amendment Order and the 45% annual reduction in information fee income from the 2009 Amendment Order.

23. RoS has now reduced its reserves considerably and to sustain business viability can no longer maintain the level of loss making fees set prior to the consultation. If the fees remain at their current levels customers would have the short term benefit of the loss making fees but RoS would not be able to invest in its services and would not be a viable business within a few years.

Option 2: Introduce a New Fee Structure

24. The introduction of a new fee structure is the only means by which RoS can return to a level of charges based on full cost recovery. This will create a stable base for RoS to move forward and to continue to play a key role within the Scottish economy. A change in fees can only be implemented by statutory order in terms of s25 of the Land Registers (Scotland) Act 1868.

• Sectors and groups affected

25. The information, registration and recording services provided by RoS are offered to the public at large and to corporate bodies, partnerships, associations and other organisations on the same basis. The same fee structure is applied to all persons, bodies, sectors and groups irrespective of their size or legal status. No discounted fees are proposed for high volume customers. This ensures that the fees charged are fair to all who use RoS services.

26. RoS give access to much of the information that it holds directly to customers electronically via Registers Direct. The public can access this information through their appointed agents, for example solicitors and private searchers, who can impose a charge on top of the Registers Direct search fee for their time and costs. The public can also contact RoS in person at the RoS Customer Service Centres in Glasgow or Edinburgh, or by letter, fax or email to request that RoS staff conduct a search via Registers Direct. The new fee structure does not restrict non electronic access to any of our services but takes account of the additional cost of providing these services where cheaper electronic methods are also available.

• Benefits

27. The Fees in the Registers of Scotland Amendment Order 2010 will ensure that RoS will be charging on the basis of full cost recovery. This will enable RoS to continue to play a key role in the Scottish economy. RoS is a key part of the infrastructure that supports the Scottish economy, underpinning the property market by registering and providing State-backed indemnity protection for some £25 billion of property transactions each year. The legal effects and presumptions that arise from registering deeds in RoS registers, combined with public access to the up-to-date information contained in those registers, provides clarity and certainty for proprietors transacting with their properties and for those, such as lenders, who do business with them.

28. Two of the more popular changes from the previous information fee reviews are retained: no fee to be charged for a nil return on Registers Direct and free access to the online service Scotland's House Prices.

29. In respect of applications such as Dispositions, the proposed new charges remain broadly in line with the original fees introduced by the Fees in the Registers of Scotland Order 1995 and there will be no increase in registration fees for properties over £1 million as these fees are already set at a relatively high level in comparison to lower value properties.

30. At the start of the consultation the quarterly figures published by RoS in May 2010 showed that for the quarter January to March 2010 the average residential house price in Scotland was £147,854. Table 1 below shows that in comparison to the fees charged in the Fees in the Registers of Scotland Order 1995, the new fee for this average price would be £240 in comparison to the 1995 fee of £330. Automated Registration of Title to Land (ARTL)

enables electronic registration which is reflected in the new reduced fee of £180. ARTL was not available in 1995 so no comparison can be given.

Table 1: Registration Fees for the Average Residential House Price in Scotland January to March 2010 £147,854

Year	Paper Application	ARTL Application
	£	£
1995	330	N/A
Current	200	150
2011	240	180

31. RoS latest quarterly figures published in November 2010 show that for the quarter July to September 2010 the average residential house price in Scotland was £163,360. Table 2 below shows that the new fee for a £163,360 property would be comparable to that charged in 1995 with the ARTL fee being considerably below the standard 1995 fee.

Table 2: Registration Fees for the Average Residential House Price in Scotland July to September 2010 £163,360

Year	Paper Application	ARTL Application
	£	£
1995	363	N/A
Current	300	225
2011	360	270

Standard Security

32. During the consultation in respect of the Fees in the Registers of Scotland Amendment Order 2006 it became clear that customers believed that there were too many fee bands. RoS addressed this by reducing the number of transfer bands from 51 to 12 and by introducing a fixed fee for Charges to replace the previous 31 bands of the ad valorem table that related to Charges. Initial consultation with customers showed this to be popular and the current structure is retained.

33. Along with keeping the current structure, the fee for registering or recording any deed that relates to a Standard Security will increase from £30 to £60 for paper applications and from £20 to £50 for ARTL applications. Such deeds would include a Standard Security, Discharge of a Standard Security, Deed of Restriction, Deed of Variation, Ranking Agreement and Deed of Postponement. This should be seen in the context of the previous reduction in fees for such applications with the 1995 cost of registering or recording a Standard Security ranging from £22 to £3750.

Chancery and Judicial Registers (CAJR)

34. One area of benefit to customers is the retention of the same level of fees for CAJR, which RoS has determined are already set at a level of full cost recovery.

Registers Direct

35. RoS give access to much of the information that it holds directly to customers electronically via Registers Direct. The public can access this information through their appointed agents, such as solicitors and private searchers. It is proposed to make Sasine deeds available via Registers Direct in the future. The 2010 Amendment order makes provision for this service and the fee set is the standard Registers Direct search fee of £3.00 plus VAT.

36. Where copies cannot be obtained from Registers Direct the fee will be set at £5.00 plus VAT plus the fee charged to RoS by the National Archives of Scotland (NAS), which holds the information. The current NAS fee is £6 but their fees are currently being reviewed so structuring the price in this way will allow RoS to respond to future fee changes by NAS.

• Costs

37. The fees charged by RoS are moving back to full cost recovery which means that costs for customers will rise but this should be seen in the context of previous fee reductions. In the following areas of change the current levels of cost are not recoverable and are now viewed by RoS as being unsustainable without additional fees.

Multiple Applications

38. The Fees in the Registers of Scotland Order 1995 contains a section relating to the "recording and registration fees for single transactions effected by more than one deed and/or application". Under this provision it means that the fee for large multiple applications over many deeds is currently set on the basis of one fee that is calculated on the total value of all of the properties plus a minimum fee for all other titles and deeds submitted for registration or recording.

39. In the future each deed submitted will be charged on value with a minimum fee payable for any other title sheet affected by that deed because current fees are not cost effective. This change will better reflect the costs that RoS incur with such applications but will result in greater costs to organisations involved in these types of transaction.

Rejections

40. In 2009/10, some 20,712 applications that were submitted for registration were rejected at the initial intake stage because of fundamental legal errors or omissions. RoS do not currently charge a fee for such applications but incur costs for the work required to examine and reject them. The 2010 Amendment Order will introduce a fee of £30 for rejected applications to recoup the costs of the process.

Cancellations

41. In addition to applications that are rejected at the initial intake check, a significant number of applications currently result in further dialogue with the submitting solicitor, either to return a deed for amendment or to requisition further evidence. When this occurs, applications are placed in 'standover'. At present, 36% of applications for First Registration (FRs), 29% of applications for Transfer of Part (TPs) and 16% of applications for a Dealing with Whole (DWs) go into Standover.

42. Sometimes, cases that reach this stage have to be cancelled because they are not supported by the basic evidential requirements necessary for registration. Currently, the charge for a cancellation is £30: this does not cover the costs involved. The new cancellation fee will be set at the application fee but with a cap of £400. This will enable RoS to recoup the costs involved and should also be an incentive to applicants and their agents to provide the required evidence. The new cancellation fee will apply to all applications irrespective of the date submitted.

Reports

43. RoS compete with firms of Private Searchers to provide Land Register Reports. The new fees for these products reflect the full cost of providing this service.

Registers Direct

44. The standard Registers Direct search fee will increase from £1.80 plus VAT to £3.00 plus VAT.

Customer Service Centre and Charges

45. As well as using solicitors and private searchers, the public can access Registers Direct through RoS staff at the RoS Customer Service Centres in Glasgow and Edinburgh. Up until now customers using the Customer Service Centres have only been charged the standard Registers Direct search fee. In order to recoup the costs of staff time, a handling charge for RoS conducting these searches will be introduced.

46. For search requests submitted by email, fax or letter there will be the standard Registers Direct charge of £3.00 plus VAT with an additional charge of £8.00 plus VAT to reflect the cost of an RoS member of staff conducting the search. The £3 Registers Direct charge will not apply to a search that produces a nil return.

47. For search requests made in person at the RoS Customer Service Centres, the fee will be the standard Registers Direct fee of £3.00 plus VAT with an additional charge of £12.00 plus VAT to reflect the cost of an RoS member of staff conducting the search. The £3 Registers Direct charge will not apply to a search that produces a nil return. The difference in fee represents the lower level of costs to RoS in dealing with requests submitted by email, fax or letter.

Personal Presentments

48. Customers can present applications in person for registration or recording at RoS Customer Service Centres. These applications are examined as the customer waits and if they meet the required legal requirements then they are accepted and a receipt issued. Although RoS incur costs in operating this service, no additional fee is currently charged for it. In the future when customers make personal presentments at the RoS Customer Service Centres and they require the documents to be scanned while they wait and a receipt issued, they will be charged £15.00 plus VAT per title affected in addition to the fee for registration or recording. If the documents are simply left to be taken on that day no personal presentment fee will be levied.

Pre-registration Enquiries

49. The Keeper has no statutory duty to provide a pre-registration service. However, RoS currently provide a service through which solicitors can enquire as to the Keeper's likely view on a title issue relating to a forthcoming application for registration in the Land Register. The service was introduced to assist the roll-out of counties on to the Land Register. Although all counties are now on the Land Register, RoS still receive between 400 and 500 pre-registration enquiries each month which incurs significant additional staff cost. At present these enquiries are free but to recoup the cost involved a standard fee of £50 will be charged for each pre-registration enquiry.

5. Scottish Firms Impact Test

50. The consultation process was started before the guidance on Business and Regulatory Impact Assessments came into place in April 2010. This meant that although businesses were not consulted in face to face meetings, a pre consultation exercise was undertaken. This involved RoS Account Managers contacting 12 customers of differing sizes from a variety of sectors that deal with RoS. These customers provided feedback on the current structure of fees and on the impact any changes would have. These customers were also sent the consultation paper and the subsequent

consultation report and analysis along with other parties that expressed an interest in the consultation. Like all RoS customers they will also be kept up to date with details of the go-live date and arrangements so that preparations can be made in a timely manner.

• **Competition Assessment**

51. The new fees have been set on a basis that is consistent with UK and EC competition law. The fee review was conducted in accordance with generally accepted accounting principles. There will be no differential impact on small business as a result of the proposed fees. The fees apply equally to all customers irrespective of size and are being set at a level to reflect the true costs to RoS.

52. In respect of the provision of registration or recording services, RoS is not in competition. The fees for such services are in respect of the provision of a public service. RoS compete with firms of Private Searchers as regards the provision of Land Register Reports. The fees for those products reflect the full cost of providing this service. The new fees have been discussed with the Office of Fair Trading in Scotland and they will not restrict competition.

• **Test run of business forms**

53. There will be no new forms as a result of the new fees.

6. Legal Aid Impact Test

54. The new fees have been discussed with the Legal Aid Team and they will not give rise to increased use of legal processes or create new rights or responsibilities that will have an impact on the legal aid fund. Any organisation or individual that use RoS services will have to pay the new fees which may increase costs for some organisations.

7. Enforcement, sanctions and monitoring

55. The Fees in the Registers of Scotland Amendment Order 2010 prescribes fees for the services to which it relates and the Keeper is under a legal duty to enforce the Order. In respect of the provision of fees for registration in the Land Register and recording of deeds in the General Register of Sasines, there is a statutory requirement for most types of application to be accompanied by the appropriate fee (section 4(2)(e) of the Land Registration (Scotland) Act 1979 and section 1 of the Land Registers (Scotland) Act 1995⁵), failing which registration will be refused.

56. In the minority of applications for registration or recording in one of the registers under the Keeper's control and in relation to the supply of information, where prepayment of the fee is not a legal requirement, the Keeper will invoke debt recovery procedures to recover monies due.

⁵ c. 14

8. Implementation and delivery plan

57. The Fees in the Registers of Scotland Amendment Order 2010 will come into force on 10 January 2010. RoS will make the required technical changes to ensure that forms and systems display the correct fee. Reference material will be updated prior to 10 January 2010 and customers will be kept informed via the RoS website, articles in The Journal and direct communications. RoS will also undertake internal communications to ensure that RoS staff are aware of the new fees and that they can deal with any potential enquiries.

• Post-implementation review

58. The revenue generated by the fee changes will be continually monitored by RoS. The Keeper announced in the 2010-13 Corporate Plan that she intended biennially to conduct a review of both information and registration fees to ensure that the fees continue to meet the cost recovery principle.

9. Summary and recommendation

59. RoS cannot pursue Option 1 of doing nothing and maintaining the status quo. RoS is self financing and has a responsibility to set fees at a level of full cost recovery. During the housing market boom RoS generated substantial profits and made a conscious decision to set fees at a loss-making level to reduce reserves. This led to the 26% annual reduction in income from registration fees in the 2006 Amendment Order and the 45% annual reduction in information fee income from the 2009 Amendment Order. RoS has now reduced its reserves considerably and to sustain business viability can no longer maintain the level of loss making fees set prior to the consultation.

60. The introduction of a new fee structure is the only means by which RoS can return to a level of charges based on full cost recovery. This will create a stable base for RoS to move forward and to continue to play a key role within the Scottish economy. The changes being introduced by the Fees in the Registers of Scotland Amendment Order 2010 aim to increase RoS' revenues by 40%. This should be seen in the context of the previous reductions in RoS fees of 26% for registration and 45% for information fees. The fees being introduced bear comparison with those being charged in 1995.

61. The changes to fees are part of a wider financial sustainability review that will seek to introduce greater efficiencies to RoS. This includes the recently-announced voluntary early severance scheme and the work underway to make a detailed examination of current processes and system architecture. The new fees, along with the introduction of greater efficiencies, will set in place the basis of full cost recovery for the services that RoS provide.

10. Declaration and publication

I have read the 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.....

Jim Mather, Minister for Enterprise, Energy and Tourism

Date.....

