

1 September 2006

JAL

**MORTON FRASER**  
SOLICITORS

Diane McLennan  
Registers of Scotland  
Executive Agency

Error! AutoText entry not defined.

by email

Dear Diane

### **CONSULTATION: DRAFT LAND REGISTRATION (SCOTLAND) RULES**

I refer to your invitation to submit comments on the draft Land Registration (Scotland) Rules. I apologise for the delay in submitting my comments which are as follows:

- 1 I have some concerns around the proposal that RoS stop doing ROI searches where an applicant's Solicitor has already checked such a search. That approach means in practice that the gap in time between the date of that search and the date of registration would not be covered. Under the present situation for house purchase transactions there is already potentially quite a long gap due to the delays in HMRC issuing SDLT Certificates. Typically the search report would have been produced at or shortly prior to the settlement of the transaction. By the time the Disposition is registered there will possibly have been a substantial gap, sometimes up to 4 weeks from the date of the search report.
- 2 Again on Search Reports, the phrase "Land Register Report" as it appears on the Forms 1, 2 and 3 presumably means a search report from the RoS, or is it wide enough to include search reports from professional searchers such as Millar & Bryce. Indeed, Morton Fraser has in the past and still do complete remortgage transactions where we carry out our own ROI search using Registers Direct. I am assuming that there is no reason why Solicitors would not be able to certify based on their own Registers Direct enquiries.
- 3 The new questions relating to evidence under the Matrimonial Homes and Civil Partnership Acts are a good step forwards. It will allow Solicitors to maintain control of these documents rather than having to submit them with paper applications where these continue to be used.
- 4 I note the dispensing of Form 8 applications. At the present time the RoS will update Land and Charge Certificates to show the removal of a prior ranking security if they are presented with an application to register a Discharge of that security accompanied by a written request that the Land Certificate and the (previously postponed) Charge Certificate be updated. If there is no longer to

be a Form 8 procedure, and if the Discharge in the above scenario is submitted using ARTL, how would an agent obtain a paper Charge Certificate reflecting the registration of the prior ranking Discharge? The paper Land Certificate reflecting the Discharge would presumably be issued if we answered question A13 requesting a paper Certificate.

- 5 In the draft Rule 5 (j) (ii), the “(b)” appears to be in the wrong place.
- 6 In the draft Form 11, there is a typo in the heading of the form on each page – “continuation” should of course be “continuation”.
- 7 I would like confirmation that the barcodes which appear on each page of the Forms do not vary as between different copies of the forms. For example, the barcode for page 1 of the Form 1 as attached to the draft rules is 01010101. Will this be the same for each page 1 of every Form 1? The reason for asking is that we presently produce our own versions of the various registration forms under licence from HMSO. These forms are generated on our case management system and are prepopulated to an extent from that system. Where we continue to submit paper forms we would like to continue to be able to produce our own versions of these forms.

I hope that the above comments make sense. Where I have posed questions, it would be useful to receive some answers in due course.

Please do not hesitate to contact me if you would like to discuss any of the comments in more detail.

Kind regards.

Yours sincerely

JOHN A LUNN  
PARTNER  
For and on behalf of Morton Fraser LLP



# FACULTY OF ADVOCATES

## RESPONSE

*by*

**THE FACULTY OF ADVOCATES**

*to*

**REGISTERS OF SCOTLAND EXECUTIVE AGENCY**

*on*

**DRAFT LAND REGISTRATION (SCOTLAND) RULES 2006**

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The Faculty has received a copy of the draft rules. They largely concern practical and technical conveyance issues upon which the Faculty does not wish to comment.

However, the Faculty considers that the opportunity should be taken in these Rules to clarify the Keeper's role where errors occur and disputes arise, particularly where, for example, there are competing and contemporaneous applications for registration in relation to the same heritable subjects.

Further consideration might also be given to appeal time limits. The Faculty is aware and has separately commented upon the Scottish Law Commission's recent and thorough review of the operation of Land Registration (Scotland) Act 1979.

The Faculty draws attention to the recent case of *Foster v. Keeper of the Registers of Scotland* 2006 SLT 513 and the issues which arose in that case.

## **Response to Consultation regarding Amendment of Rules to Land Registration (Scotland) Act 1979**

**From: Society of Scottish Searchers, First Scottish Searching Services, SPH OneSearch, Oswalds, and David Kirk and Associates.**

**Millar and Bryce will be making an individual submission.**

The Society welcomes the opportunity to respond to the Consultation Document – the following response has been established following consultation with members.

### **Introduction**

While generally supportive of the premise behind ARTL and the associated projects mentioned in the Consultation i.e. dematerialisation and the creation of the Application Record using a scanned form, the Society has concerns regarding the impact of ARTL on Registers Direct and how the information submitted in ARTL will appear on Registers Direct. The following questions are intended to enable the Society to take ARTL into account when completing reports from Registers Direct.

### **Questions/Remarks re ARTL**

1. What, in general terms, will be the impact on Registers Direct of the introduction of ARTL? It is not clear in the Consultation document, or indeed any other source of information how the link between the two systems will operate for external users.
2. Is there a maximum time from logging into ARTL to the submission of an Application?
3. What is the actual commencement date for ARTL – none of the updates have mentioned this although the Keeper has suggested November in a Parliamentary Answer.
4. In terms of dates of registration for ARTL transactions, when exactly is the close of business i.e. the cut off point after which the registration date rolls forward to the following day.
5. If an Application is rejected by the ARTL system and is then submitted as a standard paper application, will the original date of the attempted presentment be given by the Keeper?
6. Does ARTL automatically check the Application Record on submission of an ARTL application, and automatically reject the ARTL transaction if a paper Application is currently with the Keeper?

7. Will an Application Record be created when an ARTL transaction is received by the Keeper? It appears that there will be manual intervention by the Keeper's staff in terms of the updating and monitoring of Next Application Notes, so clearly the process of updating the registered title will not be fully automated initially. Will the Application created be automatically set to Confirmed as opposed to Provisional?
8. How and when can the Keeper's staff intervene to either confirm or reject an ARTL application, i.e. in the case of a Next Application note.
9. Given the manual intervention element of the interim solution, will ARTL have any adverse impact on the turnaround times for conventional paper Dealing Applications?
10. The Society's members seek an assurance that ARTL will be monitored to ensure free access to the Title Sheet will only be used as part of the registration process.
11. Regardless of the answer to question 7 above, it would appear that the time is now ripe to either waive the fee for viewing the Application Record on Registers Direct or to combine the Title Sheet and Application Record under one search. The Society would appreciate the Keeper's views.
12. Since the Society has only had the opportunity to have a brief demonstration of ARTL, and understand much of the detail remains to be decided, we reserve the right to comment again if further concerns arise.

As previously mentioned, the above response has been compiled in consultation with members of the Society. Any responses or comments should in the first instance be addressed to :

Janey Gibb, President of the Society of Scottish Searchers, 27 Ratcliffe Terrace, Edinburgh, EH9 1SX or at [jjgibb@sphproperty.co.uk](mailto:jjgibb@sphproperty.co.uk).

11th August, 2006.

Your Ref:

Our Ref: AF/MMc J7.14



Ms. Diane McLennan,  
Registers of Scotland Executive Agency,  
Room 1.05EHO,  
Meadowbank House,  
153 London Road,  
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**LAW & ADMINISTRATION SERVICE**

**Harry Tait**

**Head of Law and Administration**

If telephoning or calling please ask for  
Mr. A. Ferguson – Ext. 6316  
(Email: [andrew.ferguson@fife.gov.uk](mailto:andrew.ferguson@fife.gov.uk))

Dear Madam,

**Consultation – Draft Land Registration (Scotland) Rules 2006**

I refer to the above. As Chair of the SOLAR Conveyancing Working Group, I have been asked to respond on behalf of SOLAR to the consultation document.

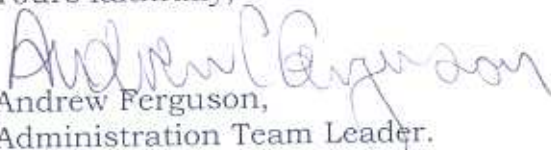
The only substantive point which the Society would wish to make is in relation to draft Regulation 17(2) which provides that:-

“Where it appears to the Keeper that proceedings in the court or the Lands Tribunal for Scotland may result in an Order for rectification of the Register under Section 9(1) of the Act, the Keeper shall note the existence of such proceedings on the title sheet of the interest in land to which the proceedings relate.”

Whilst this provision seems sensible, colleagues in the Society did wonder whether such court or Tribunal proceedings would always be intimated as a matter of course upon the Keeper. If not, then it would seem appropriate to include a provision in the Act to require the person raising any such proceedings to intimate them to the Keeper at the warrant stage. A requirement also to intimate the outcome of the action might also be useful so that abandoned or settled proceedings would no longer appear on the register where they were no longer a reality.

I return the respondent information sheet as requested.

Yours faithfully,

  
Andrew Ferguson,  
Administration Team Leader.

Enc.

MM040805

Fife Council, Fife House, North Street,  
Glenrothes, Fife KY7 5LT



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**HARRY TAIT, Head of Law & Administration**

[www.fifedirect.org.uk](http://www.fifedirect.org.uk)

**From:** Watters, Jim [Jim.Watters@southlanarkshire.gsx.gov.uk]

**Sent:** 31 August 2006 12:11

**To:** McLennan, Diane

**Subject:** Consultation re Land Registration (Scotland) Rules 2006

Dear Ms McLennan,

I refer to your e-mail of 3 July enclosing papers re the above and requesting comments from the Council .  
On receipt I forwarded them to the relevant teams within the Council involved in conveyancing related matters and asked for their comments on the proposed changes.

I am able to confirm that the consolidation and related changes to the rules are broadly welcomed and supported by the Council.

No specific comments have been forwarded relating to any individual rule or form.

I appreciate that the foregoing summary is brief but hopefully is still of assistance to you in confirming that the proposals appear to be on the right track from the Council's perspective.

Please let me know if I can be of any further assistance.

Kind Regards.

Jim Watters  
Legal Manager  
South Lanarkshire Council

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15 August 2006

Diane McLennan  
Registers of Scotland  
Executive Agency  
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153 London Road  
Edinburgh EH8 7AU

Dear Madam

**Consultation: Draft Land Registration (Scotland) Rules 2006 ("the draft rules")**

This is a response to Ian Davis' letter of June 2006 and represents the response of the WS Society ("the Society") to the consultation process on the draft rules. The draft rules have been considered by Ian Wattie, Partner, Burness; Iain McHardy, Partner, Biggart Baillie; and Caroline Docherty, the Convener of the Library Committee of the Society, Partner, Bell & Scott, all members of the Society ("the Group").

The members of the Group considered the draft rules and then met to discuss them. The following are the comments of the Group on the draft rules:

**Confirmation re Search in ROI**

The Group is unclear how the giving of this information will remove the duplication of effort, as presumably the Keeper's staff will require to "update" the ROI Search prior to completion of the registration. Any saving of effort, we feel, will be outweighed by the disadvantages of transferring responsibility to the presenting solicitor. It has, until now, been one of the perceived benefits of the RoT system that an independent check is undertaken by the Keeper's staff. The Group reiterated the concerns expressed on behalf of the Society in its response to the consultation on the draft Automated Registration of Title to Land Order, a copy of which response is enclosed for ease of reference.

If no such updating of the ROI Search is to take place, then the Group is concerned that the integrity of the whole system will be jeopardised, as Title Sheets will proceed on the basis of out-of-date information.

**Occupancy Rights**

The Group's concern here was similar, in that it is another move away from independent checking by the Keeper's staff, and places an additional duty on the presenting solicitors. Again, the Group endorsed the views expressed in the response referred to above.

Please reply to:  
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16 Hill Street  
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The Society of Writers to Her Majesty's Signet

The terms of Rule 5 (j) provide that the Keeper shall enter in the Proprietor Section a statement...*"if the Keeper is satisfied that there is no such subsisting right"*. The Keeper will in fact be relying solely on a statement made by the presenting solicitor. If no independent check is to be made, then the Group felt that the rule should be reworded to make this clear - i.e. that the Keeper is satisfied from the information provided by the presenting solicitor.

#### **Tying in with SDLT**

It was felt that it might be of assistance for the relevant application form (1, 2 or 3) to include a provision to confirm that the accompanying SDLT forms were being submitted at the same time.

#### **Land Certificates**

The members of the Group are all commercial property practitioners. Our concern is in relation to large development sites, where the obtaining of a reliable and authoritative print of the plan, which could come in as many as, say, 30 separate A4 sheets, will be difficult, even with sophisticated printing facilities. It would be well nigh impossible for firms and/or individuals with less sophisticated IT systems. The Group's suggestion is therefore that there should be made available to the proprietor at least one copy title plan, at no additional expense, (together with a further copy for each chargeholder) of the same quality as is currently incorporated within the paper Land Certificate.

#### **Rule 4 (3) (a)**

The Group expressed concern at the possibility of an entry containing "a summary of such terms in the Property Section". Entries within the burdens section in particular can currently be rendered virtually meaningless by the simple repetition of phrases such as "the said subjects". The concern is that a summary could be even more difficult to interpret, and that the lesser of two evils is therefore simply a straightforward repetition of the terms of the deed itself.

#### **Form 1 Question 9 (a)**

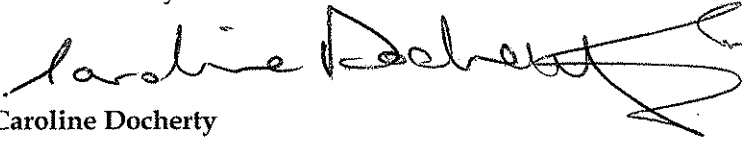
The Group was surprised that the question relates only to a search in the ROI against the grantor of the deed and any party whose right has vested in the grantor by virtue of any unregistered mid-couple or link. Given that a Form 1 relates to an application for first registration, the Group would have expected the Keeper to require such a search to have been carried out against each party having held title within the prescriptive period, for the 5 year period prior to the date of its divestment.

#### **Forms Generally - Address**

As I have mentioned, the members of the Group are all commercial property practitioners. (I should mention that this is deliberate, on the basis that we felt that the views of residential conveyancing practitioners will be amply represented in the other consultee bodies). The Group was concerned that the format for completion of the address of the Subjects is even more geared towards residential property than the current version of the forms. Currently, the option is given of "Other" which of course allows for an entry along the lines of "0.5 acres of land at High Street, Ayr".

The only option now is "house number/name" and "rest of address". We assume that it will be expected that a commercial or rural property address of the type I have described will simply be inserted within the "rest of address" field, but the Group's feeling was that this was potentially confusing, and that the existing terminology is preferable.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Caroline Docherty', with a stylized flourish at the end.

Caroline Docherty  
Convener - Library Committee  
c.docherty@bellscott.co.uk