

**Registers of Scotland**  
**Fee Review 2014**  
Consultation Analysis and Report



## Background

1. Registers of Scotland (RoS) is the non-Ministerial Government Department responsible for registering a variety of legal documents in Scotland mainly in relation to interests in land. RoS is self-funding, having been established as a Trading Fund in 1996. Following Devolution, RoS became part of the Scottish Administration and is now associated with the Finance, Employment and Sustainable Growth Portfolio of the Scottish Government.

2. RoS is headed by a statutory officeholder, the Keeper of the Registers of Scotland, who is responsible for compiling and maintaining 17 public registers. RoS' work is primarily associated with the Land Register and the General Register of Sasines. RoS handles around 350,000 registration transactions each year and also makes information from the registers publicly available.

3. In the 2010-13 Corporate Plan, the Keeper, with the agreement of Scottish Ministers, announced that she intended biennially to conduct a review of both information and registration fees to ensure that the fees charged were within the requirements outlined in paragraph 5 below. This will be the third scheduled review following that announcement.

4. The existing regime for all information, registration and recording fees is set out in the Fees in the Registers of Scotland Order 1995<sup>1</sup>, which has been amended on nine occasions, most recently by the Registers of Scotland (Consequential Provisions) Amendment Order 2013.<sup>2</sup>

5. The setting of fees charged in relation to the registers is within the statutory responsibility of Scottish Ministers and the consultation was undertaken on their behalf and with their authority. The fees must be in line with the requirements of the Scottish Public Finance Manual and enable the Keeper to recommend recording, registration and provision of information fees across the registers at a level that will appropriately recover the costs of registration, provide access and information taking into account the costs of extension of the land register and, for the first time, encourage registration in accordance with the powers of section 110 of the Land Registration etc. (Scotland) Act 2012 (LR Act 2012).

6. In proposing the fees set out in the consultation paper, account has been taken of the housing market, which is showing signs of recovery, and the Keeper's commitment to Ministers not to seek an increase in core registration fees as a result of the LR Act 2012. This means that fees will not have increased since 2010.

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<sup>1</sup> S.I. 1995/1945

<sup>2</sup> S.S.S. 2013/59

## **The Land Registration etc. (Scotland) Act 2012**

7. The Fees Order that will be introduced as a result of this consultation will be the first Fees Order made under the powers provided in the LR Act 2012. These powers have already been brought into force by Commencement Order No. 1 on 1 November 2012. Of these powers, the commencement of the new fee-making powers (section 110) and the new commercial services power (section 108) impact on this Fee Review and the content of the proposed Fees Order.

8. The LR Act 2012 offers Scottish Ministers and RoS greater flexibility in how fees are set and charges levied. For example, fees previously had to be "fixed" on the basis of cost recovery. Considerations have been expanded to include Land Register extension and are replaced with the requirements in section 110 of the LR Act. The LR Act 2012 also provides RoS with the opportunity to consolidate, within one Fees Order, all of RoS' fees, including those for the Crofting Register and the Register of Community Interests in Land (RCIL).

9. It is anticipated that any new fees that result from the proposals contained in this consultation paper will not come into effect until the Designated Day for the LR Act 2012, which is currently expected to fall in late autumn 2014. The Designated Day will be the day that the sections of the LR Act 2012, which provide for the new scheme of land registration, come into force.

## **The Consultation Process**

10. In undertaking this review, a pre-consultation exercise took place to seek stakeholder views from solicitors, private searchers, lenders and consumer groups. This helped inform the proposals outlined in the consultation paper.

11. Approval was given to RoS by Scottish Ministers to conduct a public consultation which ran for 12 weeks from 29 October 2013 to 24 January 2014. The consultation paper appeared on the SG and RoS websites' consultations sections (and attracted 928 hits on the RoS page) and was emailed to 55 organisations. Copies were also sent to SPICe. The consultation was also publicised in the RoS customer eZine and was featured as a main article in the October, November and December RoS Customer eNewsletter, which is sent out to 18,000 contacts on our database. The Fee Review was also the main article on the RoS page in The Journal, the Law Society for Scotland publication in November 2013 and featured in a reminder article in the December 2013 edition.

12. The consultation exercise generated 10 formal responses. (The last public consultation in 2010 generated 24 responses.) Customers were generally content with the proposal by Scottish Ministers to keep the main registration fees at current levels and accepted the requirement to introduce new fees for the new products and services resulting from the LR Act 2012.

Three respondents raised concern around the rejection fee and the possibility of a holiday post-designated day. The private searchers were interested in the proposals to separate statutory fees (section 107) from commercial, advisory and consultancy fees (section 108) as outlined in the LR Act 2012.

13. Nine respondents opted-in to having their response made available to the public. One respondent did not provide a respondent information form and this response will therefore be treated as confidential. The nine responses have been published in the Scottish Government Library and on the RoS website (link).

### **Assessment of the Consultation Responses**

14. Scottish Ministers have considered the responses to the consultation and intend to implement the policy as outlined in the consultation paper as follows:

- no changes to statutory registration and recording fees in the Land Register, Register of Sasines, Chancery and Judicial Registers, the Register of Community Interests in Land or the Crofting Register;
- the retention of the standard rejection fee (but see below), which will also apply to applications currently subject to cancellation fees;
- the removal of all charges relating to consultancy, advisory and commercial services from the statutory Fees Order; and
- the Keeper will have the power to vary fees between Fees Orders, up to a maximum of £10.

### **Registration and Recording Fees**

15. Three responses expressed a strong preference for RoS to waive the rejection fee for a short period following designated day.

Following receipt of consultation responses, Scottish Ministers have decided to delay introduction of the new rejection fee for two calendar months from the designated day for the LR Act 2012. This means that, subject to agreement by the Scottish Parliament, no rejection fee will be payable for applications received during the two month period.

### **LR Act 2012 new products and services**

16. No issues were raised about the fees for new products and services such as Advance Notices and notifications that will be available as a result of the new legislation. However, concerns were raised by two respondents in relation to the proposed fees for extracts. Both consider the fee of £30 for an extract and £16 for a plain copy to be too high. These fees have not increased since 2010 and are not being increased under this fee review. It is

our understanding that the concern lies with the fact that, under the 2012 Act, no extract of the title sheet is included in the cost of registration; whereas, currently hard copies of the land and charge certificates are provided on registration. Instead, customers will be issued with a PDF version of the registration which is correct as at the date of registration. Should a copy of the title sheet with evidential status be required, an extract may be ordered. This is also the current position as an office copy of the land certificate would be ordered to show the current position of the registered title.

17. The same respondents sought clarification on the charging of fees for certain lease transactions under section 25 of the LR Act 2012, the registration of leases and the requirement to register the landlord's ownership of the plot at the same time. Scottish Ministers confirm that there is no increase in fees as a result of the change in legislation: registration fees for the lease will be charged but there will be no charge to register the landlord's ownership of the plot.

### **Information Fees**

18. In light of the responses received, there will be no changes to what was proposed within the consultation paper.

### **Products and Services provided under section 108 of the LR Act 2012**

19. RoS' pricing policy will be consistent with the principles of the Information Fair Trading Scheme (for which RoS is accredited) and in accordance with UK and EU competition law. Two respondents pointed out that it would be helpful to have an indication of these fees as soon as possible. RoS intends to publish its charges for all products and services provided under section 108 at the earliest opportunity.

### **Other Areas of Interest**

20. Two responses requested that Scottish Ministers investigate introducing a new service to provide lease plans and extracts with colour copies from the Books of Council and Session. RoS is currently investigating this suggestion and working to establish the cost. If such a service were introduced in the future, it would fall under section 108 and therefore not form part of the statutory Fees Order.

### **Next Steps**

21. Scottish Ministers and the Keeper are grateful to those who have responded during the consultation period. Copies of the nine responses, which we received permission to publish, can be found on the RoS website ([http://www.ros.gov.uk/consultation/fee\\_review\\_2014/fee\\_review\\_2014.html](http://www.ros.gov.uk/consultation/fee_review_2014/fee_review_2014.html)) and are also available from the Scottish Government Library.

22. Scottish Ministers will lay a new Fees Order for approval by resolution of the Scottish Parliament in spring 2014. It is anticipated that the new fees

will come into force on the designated day, currently expected to fall in late autumn 2014.

23. The implementation of the new fees will be managed by the Keeper as part of the 2012 Act Implementation project. This will allow for consistent communications to stakeholders both internally and externally in advance of, and post, designated day.

