

## **Response to List of Consultation Questions**

This is a personal response from Professor Stewart Brymer WS to the list of consultation questions posed by Registers of Scotland with regard to the Land Registration Etc. (Scotland) Act 2012. It is, in places, brief to reflect previous involvement with the Advisory Group to the Scottish Law Commission.

**Question 1: Do you agree that the Keeper should use separate title sheets for the landlord's and tenant's rights on all occasions rather than opting to use a single title sheet?**

Comment: On balance I agree with the proposed practice for the reasons outlined in the Consultation Document.

**Question 2: Do you agree with the proposed change of name and terminology for this entry?**

Comment: Yes I do.

**Question 3: Do you agree that a schedule in the property section is the appropriate means to reflect the cross-referral to other title sheets?**

Comment: I agree with this proposal.

**Question 4: Do you consider that the "date title sheet updated to" should continue to be reflected in the title sheet and provision made in the Rules?**

Comment: Yes, for the reasons outlined in para 1.14. I find this useful and I am sure that most solicitors feel likewise.

**Question 5: Do you agree that the Keeper should omit from the property section of the title sheet details of the map reference and size of a registered plot?**

Comment: The reason given for this proposal is sound. The Cadastral Map will have all of this information. Personally, I would still prefer to see the map reference and the size of a registered plot in the property section of the title sheet. Indeed, I would go further and add the property's Unique Property Reference Number.

**Question 6: Do you agree that the Keeper should continue to disclose the consideration in the proprietorship section and provide for this in the Rules?**

Comment: Yes

**Question 7: Do you agree that the date of entry should no longer be included in the title sheet?**

Comment: No. I see no real reason for this information not being included as provided for currently.

**Question 8: Do you agree with the proposed approach for the removal of extinct overriding interests no longer required to be entered?**

Comment: Yes I agree with this proposal for the reasons given.

**Question 9: Has the reference in the property section to a deed constituting a servitude been of assistance to you?**

Frequently    Infrequently    Never

**Question 10: Do you agree that the Land Register should not reflect information regarding occupancy rights?**

Comment: Yes

**Question 11: Do you agree that discontinuous areas of land that are relative to each other by ownership and purpose may be grouped as a single cadastral unit?**

Comment: Yes

**Question 12: Do you agree that the seabed should be designated as a single operational area?**

Comment: Yes

**Question 13: Do you agree that the description of a seabed plot should comprise a verbal description, a description by reference to longitude and latitude coordinates and a plan?**

Comment: Yes

**Question 14: Do you consider that where such information is submitted to the Keeper that it should be included in the property section?**

Comment: Yes

**Question 15: Do you consider that a table of latitude and longitude coordinates should be utilised where all or part of the plot is covered by water i.e. should not be limited to seabed plots only?**

Comment: Yes

**Question 16: Do you consider that including the plan of the individual flat as supplementary data to the title sheet is helpful?**

Comment: Yes. This will be very helpful on occasion.

**Question 17: Do you consider that including the plan of the individual area leased as supplementary data to the lease title sheet is more helpful than showing the data on the cadastral unit?**

Comment: Yes

**Question 18: Do you agree that where an area of common ground is affected by the 25-metre rule, the whole of the common area should be treated as a separate cadastral unit?**

Comment: Yes

**Question 19: Do you accept that where historical conveyancing does not quantify the share, where common law rules apply the Keeper should require specification of shares in the deed to be registered?**

Comment: Yes. This is sensible.

**Question 20: Do you agree that where multiple plots of land with differing uses are owned in common, the shared areas should be grouped as a single cadastral unit?**

Comment: Yes

**Question 21: Do you agree that a list of registrable deeds together with the enactment under which they are registrable will assist you in completion of the application form?**

Comment: Yes

**Question 22: Do you agree with this approach for supporting documentation?**

Comment: Yes I do.

**Question 23: Do you agree that reference to an individual house plot from an approved development plan is sufficient to describe the part of the plot in terms of the conditions of registration?**

Comment: Yes

**Question 24: Do you agree that the Keeper should issue an email to acknowledge when an application for registration is entered onto the application record?**

Comment: Yes. I see no reason why not.

**Question 25: Do you agree that the provisional title number should be contained in the acknowledgement?**

Comment: Yes

**Question 26: Do you agree that the acknowledgement should also contain the other information that is currently included, namely details of the subjects, deed, parties, date of registration and application number?**

Comment: Yes

**Question 27: Do you agree that, in the limited circumstances where they will be permitted, the requisition policy should be applied equally to all application types?**

Comment: Yes

**Question 28: Do you agree that nothing further on requisitions is required in the Rules?**

Comment: Yes

**Question 29: Do you agree that a period of standover of 30 days in relation to requisitions made under the Act is appropriate?**

Comment: Yes I do.

**Question 30: Do you agree that notification upon the acceptance, rejection or withdrawal of an application should be by electronic means only?**

Comment: Yes

**Question 31: Do you agree that the applicant should provide an email address for the granter or the granter's agent on the application form?**

Comment: I can see no reason why not. This information should be known to the applicant.

**Question 32: Do you agree that where no email address is available in respect of the notification provisions relating to automatic plot registration, Keeper-induced registration, prescriptive claimants or rectification that the Keeper should notify by post to the last known address of the person?**

Comment: Agreed

**Question 33: Do you consider that in terms of section 41 the Keeper should notify only the proprietor of the plot of land registered as a result of an automatic plot registration under section 25?**

Comment: Yes

**Question 34: Do you agree that the Keeper's policies for evidence of possession in terms of section 43 (3) should be set out in guidance rather than prescribed in the Rules?**

Comment: Yes. This allows for flexibility – although the existing policy can hardly be described as being overly flexible.

**Question 35: Do you agree that the types of evidence set out above should be required and that guidance on the appropriate wording of affidavit evidence should be provided?**

Comment: This is sensible.

**Question 36: Do you agree that the requirements for evidence of notification in terms of section 43(4) should be set out in guidance rather than prescribed in the Rules?**

Comment: Yes

**Question 37: Do you agree that notification under section 43(4) should be by recorded delivery mail in order to satisfy the Keeper that notification has taken place?**

Comment: Absolutely.

**Question 38: Do you agree that the requirement for recorded delivery mail and a prescribed style for giving notice should be included in the Rules?**

Comment: Yes

**Question 39: Do you agree that under section 45(1) the Keeper should only re-notify those persons already notified by the applicant under section 43(4)?**

Comment: Yes

**Question 40: Do you agree that where notification has already taken place under section 43(4)(a) or (b) then notification by the Keeper should be by mail (but not recorded delivery) to the same address?**

Comment: I understand the reasoning behind the proposal but feel that notification by recorded delivery mail remains appropriate. This is a notification of significance.

**Question 41: Do you agree that in terms of section 45(2) where the numbers involved could make individual notification prohibitive the Keeper should explore alternatives such as notification to a residents' association?**

Comment: Yes

**Question 42: Do you agree that the Rules should make further provision regarding a minimum period for notification to take place prior to a prescriptive claimant application being submitted?**

Comment: Yes

**Question 43: If so, do you agree that 60 days is a suitable period?**

Comment: Yes

**Question 44: Do you agree that draft styles should be developed for decrees of reduction and orders for rectification of documents, and that the Keeper should seek to have these styles included in the Rules of Court?**

Comment: Yes. This is a good proposal.

**Question 45: Do you agree that the Keeper should publish guidance on the registration criteria for arbitral awards in advance of the designated day?**

Comment: Agreed

**Question 46: Do you agree that the advance notice form should include both the application form and the advance notice in one document?**

Comment: Agreed

**Question 47: Do you agree that a plan capable of allowing the plot of ground to be identified should be a requirement for an advance notice for a deed that will be a breakaway deed from subjects in the Sasine Register?**

Comment: this is sensible.

**Question 48: Do you agree that the end of the protected period is the appropriate time to remove the delineation from the cadastral map?**

Comment: Yes

**Question 49: Would you see a benefit in any other unilateral deed being included in an Order under section 64? If so, what deeds do you feel would be appropriate for inclusion?**

Comment: Not really at this stage. To be honest, I am not entirely clear why a Charging Order needs the protection of an Advance Notice.

**Question 50: Do you agree that the name of the deed used to register a fixed boundary agreement should be Shifting Boundary Agreement?**

Comment: Yes

**Question 51: Do you agree that the note in the property section of the affected title sheets should be drafted as follows?**

Comment: No draft produced. I am happy to leave this to Registers to agree.

**Question 52: Do you agree that the property section is the appropriate place to enter a caveat against the title?**

Comment: Yes. This is consistent with the objective of the Land Register being transparent.

**Question 53: Do you agree that requests to vary warranty in between registration events should be submitted on a specified form?**

Comment: Agreed.

**Question 54: Do you agree that the Keeper should not restrict warranty purely on the basis of the existence of a caveat?**

Comment: I could not countenance it being otherwise.

**Question 55: Do you agree that for warranty granted as part of a registration under section 25 or 29 there should be a statement on the title sheet to show that warranty was granted under section 74?**

Comment: Agreed.

**Question 56: Do you agree that any interest rate paid on claims for compensation should be aligned to the Bank of England Base Rate?**

Comment: Yes

**Question 57: Do you agree that the persons to be notified of a rectification should not be prescribed in the Rules?**

Comment: Yes

**Question 58: Do you agree that the parties consenting to rectification should be capable of demonstrating that they would have title and interest to be heard in court on the issue?**

Comment: This is appropriate

**Question 59: Do you agree that the Keeper should only consider the removing a burden as a result of section 50 of the Title Conditions (Scotland) Act 2003 where she is provided with details of a manifest inaccuracy in a particular title sheet and the manner of rectification sought?**

Comment: Yes



**Question 60: Do you consider that where realignment may not have occurred, other than in exceptional cases where matters are beyond doubt, the Keeper can only rectify where judicial determination has established that the register is inaccurate?**

Comment: Yes

**Question 61: In which circumstances would you need an extract with evidential status showing more than one cadastral unit at a time?**

Comment: Query?

**Question 62: Do you agree that access to the Keeper's registers should be provided for by order of the Scottish Ministers and that such access should continue via the Customer Service Centres by letter, email or in person?**

Comment: Agreed

**Question 63: Do you agree that an optional form to inform the Keeper of potential manifest inaccuracies in the land register should be prescribed in the Rules?**

Comment: Yes. This is sensible.

**Question 64: Do you agree that the Rules should prescribe only one application form?**

Comment: Yes

**Question 65: Do you agree that the Rules should prescribe an optional form to obtain extracts of the title sheet, cadastral map or document in the archive record?**

Comment: Yes

**Question 66: The Act as a whole: Please give additional comments about any aspect of implementation of the Act and related matters here.**

Comment: I have nothing further to add at this point in time other than the Keeper might continue to have regard to the balance between her being the custodian of State indemnity and the position of those who rely on and interact with the Land Register. There is a perception that the Keeper is seeking to place more responsibility on solicitors. That, of itself, is not wrong so long as it is done after full and proper consultation.

## Respondent Information

### Implementation of the Land Registration etc. (Scotland) Act Consultation

Please note that this form must be returned with your response to ensure that we handle your response appropriately.

Name: Professor Stewart Brymer Organisation Name: University of Dundee

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1. Are you responding as: (please tick one box)

an individual  go to 2a/b

on behalf of a group or organization  go to 2c

2a. INDIVIDUALS

Do you agree to your response being made available to the public (in the Scottish Government library and on the RoS website)?

Yes  go to 2b below

No

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (Please tick one of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name and address

Yes, make my response and name available, but not my address

2c. ON BEHALF OF GROUPS OR ORGANISATIONS:

The name and address of your organisation will be made available to the public (in the Scottish Government library and on the RoS website). Are you content for your response to be made available?

Yes

No

3. We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in relation to this consultation exercise?

Yes

No



## **Respondent Information**



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