

Final Business and Regulatory Impact Assessment

1. Title of proposal

1. Registers of Scotland Fee Review 2014 Consultation.

2. Purpose and intended effect

• Background

Registers of Scotland (RoS) is a non-Ministerial Government Department within the Scottish Administration and is headed by the Keeper of the Registers of Scotland, who is currently responsible for compiling and maintaining 17 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).

RoS' work is demand led, fluctuating in response to activity in the property market. We handle around 350,000 registration transactions each year and make information from the registers publicly available.

Our work is self-financing, being funded by the fees that we charge for recording, registration and for providing information from the registers.

The Land Registration etc. (Scotland) Bill was passed by the Scottish Parliament on 31 May 2012 and received Royal Assent on 10 July 2012. The primary purpose of the Land Registration etc. (Scotland) Act 2012 (LR Act 2012) was to reform and restate the law of the registration of rights to land in the Land Register. The Land Register is under the management and control of the Keeper of the Registers of Scotland (the Keeper) and the Keeper is responsible for the implementation of the LR Act 2012.

The law of land registration in Scotland is currently governed by the Land Registration (Scotland) Act 1979. The LR Act 2012 repeals much of the 1979 Act and the Land Registration (Scotland) Rules 2006 (the 2006 Rules) made under the powers contained under that act. Essentially, there are five main policy areas in the LR Act 2012:

- provide a modernised and comprehensive scheme of land registration,
- realign registration law with property law;
- provide a scheme for the completion of the Land Register and the closure of the Register of Sasines;
- introduce a system of Advance Notices to protect conveyancing transactions from certain entries in the Register of Inhibitions and from competing deeds; and
- amend the Requirements of Writing (Scotland) Act 1995 to allow for legally valid electronic documents.

The commencement of the provisions in the LR Act 2012 that will bring in the new scheme of land registration will come into force on what is defined as the “designated day”. This day will be set by an order made by the Scottish Ministers. The LR Act 2012 prescribes that the order must be made at least six months before the specified date. Although no date has yet been set, the Keeper is working towards a date sometime in late autumn 2014. If the revised Fees Order is accepted, it will also come into force on the designated day.

The implementation of the LR Act 2012 will have a fundamental impact on our core business and in turn our customers. The implementation involves the development of new policy, changes to current processes and the introduction of new products, processes and IT systems.

The last Fees Order was implemented in 2010. This fee review requires RoS to introduce fees for the new products resulting from the LR Act 2012, such as the new system of advance notices. The LR Act 2012 Implementation was consulted on separately from this Fee Review.

- **Objective**

This is a final Business and Regulatory Impact Assessment of the changes set out in the above consultation, which sought views on proposed changes to the fees that RoS may charge, which are set by Scottish Ministers.

The LR Act 2012 offers Scottish Ministers greater flexibility in how fees are set. Previously, these had to be set on the basis of cost recovery. The restriction to ‘fix’ fees and the limitation of setting fees at a level of cost recovery will now be lifted. This means that issues such as value for money can be taken into account. Section 110 gives the Keeper the power to charge fees for registration, recording and the provision of information. Section 108 gives the Keeper the power to provide commercial services and provides a power to agree the fees charged for those services with the customer. The fees for these services will not be included in the statutory Fees Order.

The policy objective of the fees proposed is to enable the Keeper to charge recording, registration and provision of information fees across the registers at a level that will appropriately recover costs of registration, provide access to information, take into account the costs of extension of the Land Register and encourage registration in accordance with the powers of section 110 of the LR Act 2012.

This paper considers the impact on business and other interests of the proposed changes.

- **Rationale for Government Intervention**

Statutory responsibility for the setting of fees charged in relation to our registers lies with the Scottish Ministers and this 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 in accordance with the powers set out in section 110 of the LR Act 2012.

The Keeper announced in the 2010-13 Corporate Plan that she intended biennially to conduct a review of fees to ensure that the fees charged were within the above requirements. This is the third scheduled review following that announcement.

The existing regime for all of our information, registration and recording fees is set out in the Fees in the Registers of Scotland Order 1995 as amended by the Fees in the Registers of Scotland (Consequential Provisions) Amendment Order 2013 No. 59.

The Fees Order that will be introduced as a result of this consultation will be the first Fee Order made under the powers in section 110 of the LR Act 2012. It will incorporate the fees for new products and services resulting from this legislation. It will also consolidate within one order all of RoS' fees, including those for the Crofting Register and the Register of Community Interest in Land.

RoS contribute to the Scottish Government's purpose "*to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.*" In particular, the work of RoS aligns with the Scottish Government's strategic objective - Wealthier and fairer - through helping Scotland become "*the most attractive place for doing business in Europe.*" The introduction of the new products under the LR Act 2012 should ensure that we offer the public a service which is "*high quality, continually improving, efficient and responsive to people's needs.*"

3. Consultation

• Within government

Ministerial approval was given to RoS by the Minister for Energy, Enterprise and Tourism to conduct this consultation.

• Public Consultation

RoS is committed to consulting its customers on any changes affecting the provision of its services. The consultation on fees took place for 12 weeks between 29 October 2013 and 24 January 2014. All responses received by the end of the consultation period will be considered by Scottish Ministers prior to their completing a new Fees Order and laying it before the Scottish Parliament (planned for May 2014). It is anticipated that any change in the fees that RoS charge would not be implemented until the third quarter of 2014. This is to align with the LR Act 2012 designated day. (Please note a separate consultation was held on the LR Act 2012 implementation.)

- **Business**

RoS conducted a pre-consultation exercise to seek the views of the solicitors, private searchers, lenders, consumer groups and other users of our services. RoS Account Managers visited nine diverse organisations (in terms of size and location) to gather views on the current fees that RoS charge and on the impact that the LR Act 2012 and any potential changes to existing products and services would have on fees. RoS also gathered views on the proposed split of statutory and commercial services.

4. Options

Prior to this consultation, RoS considered alternative options for its fee structure. In addition to doing nothing, we looked at introducing a new Fees Order that maintains our main registration fees at the same level and incorporates the fees for the new products resulting from the LR Act 2012. We also looked at the option of reducing the number of bands from 12 to 7 or 5 and the introduction of an entirely new fee structure based on a percentage of the consideration/value.

The options to change the number of bands and the option to base fees as a percentage of the consideration were discounted on this occasion, based on stakeholder engagement throughout the BRIA visits and our intention to minimise disruption to customers through introducing further changes at this time. We therefore propose the following two options and outline the costs and benefits accordingly.

Option 1: Do nothing

With the implementation of the LR Act 2012, this option would result in RoS being unable to charge for new products arising from this legislation.

Option 2: Introduce New Fees Order

This option maintains our main registration fees at their current level and in turn maintains our reserves at the level agreed with Scottish Ministers in December 2012. It also introduces fees for the new products being brought in by the LR Act 2012. This includes the removal of commercial products and services from the statutory Fees Order (as per section 108 of the LR Act 2012). Our statutory Registration Fees would remain unchanged. Any changes or impacts from this option will be outlined in the costs and benefits sections below.

- **Sectors and groups affected by Options 1 and 2**

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. This ensures that the fees charged are fair to all who use our services.

RoS give access to much of the information that we hold directly to business customers electronically via our Registers Direct online service. The public can access this information through their appointed agents, for example solicitors and private searchers. Under the powers of the LR Act 2012, this will now be treated as a commercial service and will no longer form part of the statutory Fees Order. The fees that we charge for this product will be agreed separately.

The public can also contact RoS in person at our Customer Service Centres in Glasgow or Edinburgh, or by letter or email to request that RoS staff conduct a search. This service will remain part of the statutory Fees Order. It is proposed to improve this service with the introduction of fixed fees rather than the current system of administrative fee (£8 or £12) plus £3 per search required.

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 property transactions. The legal effects and presumptions that arise from registering deeds in our 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.

Option 1 Under this option, the Keeper would not ask the Scottish Ministers to make a new Statutory Fees Order.

Option 1 Costs

The costs of conducting a fee review and making the order fall wholly on the Keeper. The costs are set out under option 2. If the order were not introduced, these costs would not be incurred by the Keeper.

This is not a viable option as citizens would not benefit from the introduction of the new products. The LR Act 2012 was enacted to ensure that the policy drivers came into force benefiting all concerned. Advance notices represent one of the key policy drivers behind the legislation. They replace letters of obligation and provide greater security to the grantee in a deed. RoS would be unable to introduce a fee for this new product if option 1 were adopted. RoS would also be unable to introduce fees for the other new products outlined under Option 2 or implement section 108 services to allow for commercial rates to be charged for consultancy and provision of information.

Option 1 Benefits

There are no identifiable benefits from not implementing a revised Fees Order, only dis-benefits, as this would result in RoS being unable to charge fees for the new products resulting from the 2012 Act legislation. The Keeper would be unable to recommend fees across the registers in accordance with

the powers of section 110 of the LR Act 2012. (Please note that the Land Registration etc. (Scotland) Act 2012 was consulted on separately.)

Option 2 Under this option the Keeper would ask Scottish Ministers to make a new Statutory Fees Order incorporating the fees for new products and consolidating within one order all of RoS' fees including those for the Crofting Register and RCIL.

Option 2 Benefits

The proposed fees will enable the Keeper to recommend fees across the registers at a level that will appropriately recover the costs of registration, provide access to information, take into account the costs of extension of the Land Register and encourage registration in accordance with the powers of section 110 of the LR Act 2012.

In proposing fees for the new products resulting from the LR Act 2012, RoS will be able to implement and enact the legislation as per the will of Parliament.

All fees relating to the 17 Registers under the Keeper's control will be captured in one Order, meaning that the information can all be found in one place.

The proposal to introduce a new Fees Order, while maintaining our current feeing structure and levels, gives our customers the opportunity to embed the changes stemming from the LR Act 2012 and Land and Buildings Transactions Tax (due to be implemented April 2015) before introducing further changes to them through our feeing structure. The feedback in general has shown that customers wish to retain the current 12-band fee structure, which provides for transparency and certainty of costs associated with their transaction.

The majority of our Registration and Recording fees will remain unchanged, resulting in consistency for our customers. The Scottish Ministers and the Keeper stated that RoS would not increase fees as a result of the LR Act 2012. This option maintains this commitment.

Section 108 of the LR Act 2012 gives the Keeper the power to provide consultancy, advisory or other commercial services and provides a power to agree the fees charged for those services with the customer. The fees for these services would not be included in the statutory Fees Order.

Section 107 of the LR Act 2012 outlines the requirement to provide access to, and information from, any of the Keeper's registers. Statutory access to information will continue by way of the RoS Customer Service Centres, by letter, email or in person.

Customer Service Centre information fees will remain in the statutory Fees Order. These fees are currently charged dependent on the number of

searches and an additional administration charge. We propose introducing single flat fees dependent on whether they are approached in person or in writing. This will provide greater transparency for our customers.

LR Act 2012 New Product - Advance Notices

Advance notices replace Letters of Obligation, provide greater security to the grantee of a deed, and the majority will be submitted electronically. The Economic Impact Assessment of the draft Land Registration (Scotland) Bill published in October 2009 estimated the annual cost saving of moving from Letters of Obligation to Advance Notices at £9.9 million. This was based on a fee of £20 meaning that actual savings could be significantly higher.

RoS has conducted investigation into the proposed fee based on our estimated IT and resource costs. The proposed fee is dependent on the estimated take-up/volume of advance notices after the Designated Day.

We propose an initial fee of £10 be charged with the potential for the Keeper to use her new power under section 110 of the LR Act 2012 to increase or decrease it (by a maximum of £10) based on actual volumes post designated day.

Rejections

We propose maintaining the rejections fee of £30. This fee was introduced following the 2010 fee review and has resulted in a 70% drop in rejections, which now account for 3% of applications received.

There will no longer be cancellations under the LR Act 2012, as outlined in the one-shot rule (sections 21-28). Under the new legislation, all issues that result in RoS being unable to continue/complete the registration process will be rejected. These rejections, which take place after the application has been taken on at intake, would also be charged at £30.

The Economic Impact Assessment of the draft Land Registration (Scotland) Bill published in October 2009 referred to the inefficiencies and increasing costs of registration attributed to placing applications in "stand over". It is envisaged that the one-shot rule will act as an incentive for solicitors to get applications right first time. This, in turn, should deliver cost savings to both solicitors and RoS since it will generally be less expensive to deal with a case once than on multiple occasions.

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.

Power to Vary Registration Fees In-Between Fees Orders

The 2012 Act enables the Keeper (within limits) to vary registration and recording fees in between consultations so long as the method is stated in the Fees Order. This power is expressed in section 110(1)(c) of the 2012 Act. It is proposed that this power be expressed as plus or minus £10 in the Fees Order. This would enable the Keeper to respond quickly to dramatic changes in intakes or unexpected consequences from the LR Act 2012. This power would only be used after consulting Scottish Ministers and with the provision of three months' notice to customers.

Option 2 Costs

The costs of making and implementing the new Fees Order will fall wholly on the Keeper.

The fees proposed for the new products resulting from the LR Act 2012 legislation are outlined below. (Please see the information referring to Advance Notices outlined above.)

LR Act 2012 New Product - Caveats

A caveat is the publication on a title sheet of the existence of a court action for a title dispute to warn of the ongoing dispute and the effect it may have on the title. A caveat does not prevent parties transacting with land subject to litigation, but if the Keeper later adversely rectifies a title as a result of the court action, a party would be unable to claim they were unaware of the litigation and compensation may be less than it would have been if there was no caveat. Caveats can be recalled, renewed and discharged. RoS has conducted investigation into the proposed fee based on process and resource costs and a fee of £60.

LR Act 2012 New Product - section 66 Shifting Water Boundaries

This deed would allow proprietors to fix a boundary that would normally be affected by alluvion.¹ We propose the fee be set at £60 (as per the miscellaneous deed fee).

LR Act 2012 New Product – section 76 Application for Increase in the Level of Warranty

In applications for registrations where the Keeper has previously excluded or limited warranty, this new product allows the proprietor to apply to increase the level of warranty. We propose the fee to vary warranty between registration events be set at £60.

¹ Alluvion : the gradual accretion of new land by the deposit of sand and earth through the action of the sea or river to the benefit of the owner of the land to which it becomes attached.

5. Scottish Firms Impact Test

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.

RoS conducted a pre-consultation exercise to seek the views of solicitors, private searchers, lenders, consumer groups and other users of our services. RoS Account Managers visited nine diverse organisations (in terms of size and location) to gather views on the current fees that RoS charge and on the impact that the LR Act 2012 and any potential changes to existing products/services would have on fees.

RoS also gathered views on the proposed split of statutory and commercial services. At our visits, we clarified the impact of our proposals in line with the different stakeholders, discussing the more relevant areas in detail as appropriate. We sought both to explain and better understand the costs and benefits that any proposals would have on the business/stakeholder involved.

The following organisations were visited:

First Scottish	Large private searcher
Arlow Brown	Sole practitioner
Blackadders	Large solicitor
Aberdein Considine	Large solicitor
Citizens Advice Bureau	Citizen/public
Taylor Wimpey	Property developer
Millar & Bryce	Large private searcher
Glasgow City Council	Council
Royal Bank of Scotland	Lender

Responses received from the visits overwhelmingly supported the introduction of the new products as a result of the LR Act 2012. Proposed fees for the new products were considered fair.

The majority of the organisations supported the proposal to maintain the current feeing structure at 12 bands.

It was generally accepted that the rejection fee, introduced in 2010, had contributed to fewer mistakes and in turn met its policy objective.

Customers will be advised well in advance of any fee changes being implemented for commercial products and the pricing structure and policy for commercial products will be published.

- **Competition assessment**

The proposed fees have been set on a basis that is consistent with UK and EU competition law. The fee review was conducted in accordance with generally accepted accounting principles. The proposals do not directly or

indirectly limit the range or number of suppliers, limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

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 competes commercially to supply data and reports to numerous business sectors. As well as providing free data through ros.gov.uk, RoS gives access to much of the information held directly to business customers digitally via Registers Direct. Given the new powers provided by section 108 of the LR Act 2012, RoS will compete in commercial markets. The pricing policy adopted will be consistent with the principles of the Information Fair Trader Scheme, in which we are accredited, and in accordance with UK and EU competition law.

Test Run of business forms

Any new forms introduced as a result of the LR Act 2012 legislation and new products will be fully tested with customers prior to being implemented. It is essential that the forms request the necessary information to comply with the legal requirements for registration as prescribed in the Act and the business needs of the Keeper and solicitor firms.

6. Legal Aid Impact Test

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.

7. Enforcement, sanctions and monitoring

The Keeper will consistently apply the fees that will be introduced as a result of the consultation and subsequent Fees Order. In respect of the provision of fees for registration in the Land Register and other Registers, there is a statutory requirement for most types of application to be accompanied by the appropriate fee failing which registration will be refused.

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.

8. Implementation and delivery plan

It is anticipated that any new fees that result from these proposals will not come into effect until the third quarter of 2014. The fees will come into force on the Designated Day, which is currently expected to fall in late autumn

2014. The designated day will be the day that all the sections of the LR Act 2012, which provide for the new scheme of land registration, come into force.

The intended reference material will be updated prior to this date and customers will be kept informed via the RoS website, articles in The Journal and direct communications. RoS will also undertake internal communications and training to ensure that RoS staff are aware of the new fees and that they can deal with any potential enquiries.

• **Post-implementation review**

The revenue generated from our fees will be continually monitored by RoS. The Keeper announced in the 2010-13 Corporate Plan that she intended biennially to conduct a review of fees. Post-implementation review, scheduled for six months after designated day, will monitor whether impacts have been as expected and in turn the costs and benefits resulting from the policy objective.

9. Summary and recommendation

In light of the LR Act 2012, RoS cannot pursue option 1. The proposed fees in option 2 will enable the Keeper to recommend fees across the registers at a level that will appropriately recover the costs of registration, provide access to information, take into account the costs of extension of the Land Register and encourage registration in accordance with the provisions of section 110 of the LR Act 2012. The benefits outlined above will also be realised.

In proposing fees for the new products resulting from the LR Act 2012, RoS will be able to implement and enact the legislation as per the will of Parliament. The costs of conducting a fee review and making the Order fall wholly on the Keeper. The costs are set out under option 2.

Policy regarding rejection fees will not change from that outlined in the consultation. However, after consideration of the 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. This will ease transition and allow our customers to adjust to the new rules following implementation of the LR Act 2012.

There is an intention to conduct a Post Implementation Review six months after designated day (when the fees Order will come into force). As part of this review, we will undertake benefits realisation. At this stage the BRIA will be updated to reflect this review and re-published.

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:

A handwritten signature in black ink that reads "Sheenagh Adams". The signature is written in a cursive style with a large initial 'S'.

Date: 14 May 2014

Sheenagh Adams, Keeper of the Registers of Scotland