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## The Registers of Scotland

By email

### Comments by the Scottish Property Federation on the completion of the Land Register

1. The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We have some 150 corporate members with interests in Scottish real estate including; property funds, major institutional investors, lenders, developers, landlords of commercial and residential property, and professional property consultants and advisers.
2. We are pleased to submit comments to the Registers of Scotland on the completion of the Land Register. We recognise that our views will be made public and shared with other authorities at the Keeper's discretion.
3. We support the aim to complete the Land Register. The timescale may be ambitious given where we are now after over 30 years since the Register was established but we nonetheless fully support the intention to complete the Register and to close the Register of Sasines in order to leave Scotland with one clear, transparent and recognisable Land Register.
4. Clearly if we continue to depend upon voluntary or trigger based completion of the Register then we will be coming towards the end of the twenty-first century before we achieve the aim of a single, transparent and accessible land register: for a modern developed economy this must surely be unacceptable. We welcome the aim and purpose of this consultation therefore and we are pleased to provide our detailed comments below.

#### Question 1

#### **Do you agree that Scottish Ministers should close the Sasine Register to standard securities?**

5. We agree. The Sasine Register was an historic achievement by Scotland but it is now out of date and of course since the 1979 Act used much less often. Our understanding is that new standard securities are the main area where our members would still use the Sasine Register. However, from discussions with the Registers of Scotland it appears to us that the data collected from Sasine transactions is not as robust as that held in the Land Register. It could be that, with some of the additional requirements of LBTT

compared to SDLT for leases, even this area of data collection may be superseded by other government administration.

## **Question 2**

**Do you agree that the fee for the associated voluntary registration of the property should be waived?**

6. We agree. If the timetable for completing the register is to stand any chance of being met then it will be important not to erect barriers to voluntary registration of title to land affected by re-mortgaged standard securities to the Land Register. One such barrier would be the fee upon a re-mortgage and associated voluntary registration of the property. We support the intention to waive the fee for these applications.
7. The consultation paper observes that the level of activity of re-mortgaging property and land had dropped during the recession. This has suggested a relatively low level of activity which is reflected in the consultation paper (50,000 over 10 years). Although we would be cautious at suggesting there will be a resurgence to 'double' this number we do think that there will be a significant increase in re-mortgages in the next five years as people seek to improve their properties not least because they may seek to avoid significant transaction charges for larger higher value residential properties and also as base rates rise again.

## **Question 3**

**Do you agree that closure of the Sasine Register for standard securities should be introduced across Scotland at the one time or should it be introduced on a staggered basis by county or by groups of counties?**

8. Our view on this would be influenced by the view of the Registers on their own capacity to effectively close the Sasine Register at once to standard securities. Notwithstanding this point, we think it would better to appoint a single day for the closure of the register (in respect of all counties) which would have the benefit of clarity and avoid market confusion for deeds of standard securities. The property industry will frequently be engaged in multi-site transactions, conveyances and re-financing and therefore it would be preferable to avoid unnecessary complexity in the legal registration of these key deeds (standard securities). We comment below on the approach to other forms of deed.

## **Question 4**

**What deeds do you consider it appropriate to close the Sasine Register and so require voluntary registration of the title in order to give legal effect to the deed?**

9. We recognise the completion of the register will require other forms of deed to be transferred across to the Land Register. Ideally this should happen at the same time as closure of the Sasine Register to standard securities but the consultation suggests this will impose too great a demand on limited resources. We accept therefore that other deeds should be transferred over a phased period of time. This will not be a perfect solution but it appears to be the only credible option open.

### **Question 5**

**Do you agree that the fee for the associated voluntary registration of the property should be waived?**

10. We agree, particularly noting that the parties involved will have engaged separate legal advice and that the process of voluntarily moving other deeds than standard securities onto the register will improve the future efficiency, transparency and usefulness of the register itself as a national asset. The waiver of the fee will be a helpful move to encourage these additional voluntary transfers of deeds other than standard securities to the land register.

### **Question 6**

**Do you agree that the legal power the Keeper has to refuse a request for voluntary registration should be removed, irrespective of the outcome of the proposals on introducing additional triggers?**

11. We agree with the proposal to remove the Keeper's discretion and note that this will in effect continue the 'open door' policy on voluntary registrations that has existed for some time.

### **Question 7**

**Do you agree that a reduced fee should apply to voluntary registrations? If so, do you agree with the proposed 10% reduction?**

12. We agree that a reduced fee should apply to voluntary registrations. However, we do not agree with the proposal to apply a 90% registration fee to voluntary registration. This is little incentive to encourage voluntary registration aside from the Scottish Ministers and other public sector bodies. In paragraph 31 the consultation accepts that the bulk of the complexity and costs involved in more complicated voluntary registrations is borne through legal searches separately by the applicant. In addition the greater the volume of voluntary registrations to the land register the greater efficiency will be achieved for the system as a whole to the benefit of the Keeper. In our view there may be a case for a minimal administration charge at best but to pay 90% of the full conveyance based registration fee is an unhelpful deterrent to encouraging greater numbers of voluntary registrations.

### **Question 8**

**Do you agree with the proposed approach to piloting KIR to inform a consultation on the detailed approach to and strategy for KIR?**

13. We agree. It is clear that KIR will be the only way to ensure the completion of the Register and we support the intention of pilots to identify the best way of rolling out the programme of KIR. The reference to pre-emptive rights to buy land via the Land Reform (2003) Act will of course be further enhanced by the extension of this Act's powers to cover the whole of Scotland and not just for settlements with a population under 10,000. The Keeper will therefore be working within the context of a moving tide of other legislation and enhanced land and property rights.

14. A further consultation on KIR in particular will be welcome.

**Question 9**

**Should other elements be included in the pilot and what should these be?**

15. The infrastructure and utilities providers may be able to add to the process through their own information on wayleaves, servitudes and mapping of points of interest.

**Question 10**

**Do you agree with the proposed approach to completion?**

16. Yes, although we believe it may be preferable for standard securities to have a single date set for the closure of the Sasine Register. However, we support the intention to seek mainly trigger-based and voluntary registration in the first five years of the ten year plan to be followed in the last five years by emphasis upon Keeper-induced Registration.

**Question 11**

**Have you any views on our proposals for funding the completion of the register?**

17. We welcome the approach broadly although we feel that there should be a greater incentive to encourage the voluntary registration of land and property. Registration fees for commercial transactions in Scotland are significantly above those south of the border so we welcome the proposal to fund costs associated with the completion of the Register out of reserves in the main.