

REGISTERS OF SCOTLAND
COMPLETION OF THE LAND REGISTER
PUBLIC CONSULTATION

RESPONSE OF SOUTH LANARKSHIRE COUNCIL

INTRODUCTION

South Lanarkshire Council understands and accepts the principle that completion of the Land Register is a desirable and valuable national outcome. However the Council has considerable concerns about the approach proposed. In particular and as set out in some of the responses to the consultation questions the Council notes that:-

1. there has been no consideration as to how the requirement on public authorities to complete registration of all their land within five years accords with Councils' duty to secure best value in terms of Section 1 of the Local Government (Scotland) Act 2003;
2. there has been no recognition of the volume of work that this would create for public authorities and the consequential cost involved which at a time of year on year savings demand on local authorities is in our view unrealistic;
3. there appears to be no appreciation of the differing types of land that local authorities own which in the case of this Council consists of large parks, small open spaces, *solum* of certain roads but not others and the residue of Council houses which will not have been purchased under the Right to Buy; and
4. no substantive or realistic proposals have been put forward by the Keeper of the Land Register in order to address the issues involved (for public authorities).

Question 1: Do you agree that Scottish Ministers should close the Sasine Register to standard securities?

Response 1: This is a proposal which is likely to have very little impact on local authorities however as a means of progressing completion in the Land Register we think it is a sensible proposal.

Question 2: Do you agree that the fee for the associated voluntary registration of the property should be waived?

Response 2: We assume that the fee for registration of the security itself would still be charged as a fee would have been due under the Sasine system. On that basis we agree that it is appropriate not to impose a fee for the voluntary registration of the affected property.

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?

Response 3: We consider it would appropriate for this to be introduced on a national basis as opposed to county by county particularly given the low level of lending at present.

Question 4: What deeds do you consider it appropriate to close the Sasine Register to and so require voluntary registration of the title in order to give legal effect to the deed?

Response 4: We agree that where the owner of the property is granting the deed that voluntary registration should be required. In the case of deeds which do not require the consent of the owner such as local authority Charging Orders we consider it would be unfair and impractical to require voluntary registration in such instances.

Question 5: Do you agree that the fee for the associated voluntary registration of the property should be waived?

Response 5: We agree that it would be appropriate for the fee for the associated voluntary registration to be waived.

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?

Response 6: Given the Scottish Ministers desire to move towards completion of the Land Register within ten years we consider that the Keeper should not have power to refuse a request for voluntary registration. However there could be an exception to this in circumstances where the Keeper considers it unreasonable to progress a particular application. However the Keeper is in a better position than ourselves to take a view on this.

Question 7: Do you agree that a reduced fee should apply to voluntary registrations? If so, do you agree with the proposed 10% reduction?

Response 7: Our concern with this question is that it is predicated on a benefit being obtained by the applicant on registration in return for a fee. In the case of a considerable proportion of local authorities land there will simply be no or minimal benefit in a voluntary registration. Some Councils such as South Lanarkshire Council have already plotted our land ownership on the Ordnance Survey Map and already have a good understanding of the extent of our land holdings. Voluntary registration would add little to the efficacy of our records.

Also certain local authority land holdings such as public parks, schools particularly those under PFI/PPP arrangements open spaces, solum of some roads, inalienable Common Good and Council houses (which post August 2016 will no longer be eligible for sale) are unlikely to be the subject of disposal. At this time there are approximately 25,000 Council House tenancies which will require to be voluntarily registered either individually or in blocks.

If local authorities are expected to carry out voluntary registrations to assist in the Scottish Governments desire to complete the Land Register as opposed to any of their own functions (assuming such is

intra vires) it is considered that no registration fee should be payable. This could be caveated by a requirement that if the subject of the Land Certificate were sold for market value within a period of say five years then the registration fee would be paid by the local authority to the Keeper at that time. However the registration fees involved are only a part of the total costs which would have to be borne by local authorities and even the waiving of any fee would not resolve the significant other resource issues involved.

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?

Response 8: We are unaware whether any of this Council's properties are in any of the ROS research areas. To be able to comment on this we would need to know whether this is the case. As Council houses cover a diverse range of housing estates with varying housing types in each some of the associated right of access, common areas, maintenance obligations differ considerably from one property to another. Care would have to be taken in this respect. Apart from this we have no comments.

Question 9: Should other elements be included in the pilot and what should these be?

Response: No comment.

Question 10: Do you agree with the proposed approach to completion?

Response: Paragraph 39 of the consultation states that the registration of public land will be based on a set of service level agreements between ROS and individual public bodies. No specification is given as to what such service level agreements will contain and accordingly it is impossible to give any meaningful comment on this. However we think it important to comment that the service being provided will be predominately a service by public bodies to the Keeper and the Scottish Government. In the case of a Council which has a highly developed digitised mapping system such as ourselves we view minimal benefits to be achieved. Indeed we would question whether the entering of a service level agreement to voluntarily register all our land would be *intra vires* of the local authority (see below).

Section 1 of the Local Government (Scotland) Act 2003 requires local authorities to secure best value for their area. Best value is defined as "*continuous improvement in the performance of the authority's functions*". We are unable to see how voluntary registration would serve the functions of the Council and accordingly consider that undertaking this exercise would be challengeable as *ultra vires*.

No consideration appears to have been given to the Community Empowerment Bill which introduces an obligation on Local Authorities to publish a register of Common Good Assets. All land acquired within a burgh will require to be examined to identify if it is Common Good and what any related issues are e.g. alienability or not. It would seem to be, (at the point when investigation has been completed), logical to complete Land Registration for these areas.

Further Local Authorities commonly have large foundation titles (10ha+), particularly related to historical acquisitions for housing provision. Numerous sales have occurred over time from these foundation titles, particularly relating to Tenant's Rights Sales under the Housing (Scotland) Acts. If the current system of registration continues then the registration of the foundation title would require to take into account all sales derived from that title. The logistics involved in completing titles of this nature would be significant in their own right irrespective of 5 year, the timescale proposed.

We have an initial estimate that to achieve the desired outcome would cost this Council £4.5M over the five year period (excluding inflation). This is in terms of the projected additional staff costs, searches and registration fees. Coming at a time when local authorities are being asked to make considerable savings year on year we consider that it is not practicable or realistic to do so.

We would also question whether even if no registration fees were charged and funding was available to secure the additional staff required that the necessary staff would actually be available. Our estimate is that in this Council approximately ten new staff would be needed, a majority of whom would be legal staff. In the case where all public bodies are in a similar position the question would be where are all the qualified staff to come from? Would it be the case that a premium would have to be paid to attract such staff to do what would not be likely to be regarded as a career development or enhancing role?

Question 11: Have you any views on our proposals for funding the completion of the Land Register?

Response: In so far as the voluntary registration of all local authority land is concerned this Council is unable to agree with the proposals. These appear to be only concerned with the funding of the Keeper which is a legitimate and appropriate aspect of the proposal. However the proposal appears to be predicated on the assumption that:-

- (a) *it is intras vires* of local authorities to carry out this activity;
- (b) given no additional funding is being allocated by Scottish Government that the costs can and will be borne by local authorities within existing budgets; and
- (c) even if the above two matters were discounted that staff resources will actually be available to carry out the necessary work.

South Lanarkshire Council does not disagree that the completion of the Land Register is a worthwhile aim for Scotland as a whole and this Council is willing to assist in achieving that target where practicable and where this can be accommodated within existing resources. However it has to be recognised that in the current economic climate existing resources are being consistently squeezed and with other significant legislative changes such as the integration of health and social care, self directed support and the inevitable increase in applications to purchase council houses in the run up to August 2016 the scope for carrying out this work is very low.

The current process of registration in our experience is over-complex and lengthy. The turnaround times are currently measured in months and in some instances years. There is no doubt that the current string of processes involved in registration requires urgent review and resolution. Additionally the Keeper does not (or cannot) accept digital information in the registration process but only hardcopy drawings or plans as part of the submitted/annexed information. The submitted hardcopy material is then redigitised to form the geometry used in the Land Certificate.

We consider that the principle of combining RoS Research Areas using current RoS digital data together with digital Terrier data supplied by public bodies should be investigated. There is obvious merit in grouping properties together so that GIS analysis on the geometry of adjoining title polygons (mosaics) can be undertaken. The Keeper has to be able to accept and use submitted digital information. The use of GIS existing technology must be established to make the most efficient use of data already collected by RoS in the Research Areas project along with digital information which most public bodies already have.

Currently the burdens which are derived from prior writs, and which still subsist, require to be referred to in the Land Certificate. Unless these burdens have already been captured in a relational database there is no quick way of incorporating these into the Land Certificate.

Consideration would be given into completing the burdens section of the Land Certificate at a later time.



Completion of the Land Register - Public Consultation

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

Name:	<input type="text" value="Hazel Lawson"/>	Organisation Name:	<input type="text" value="South Lanarkshire Council"/>
Contact number:	<input type="text" value="01698 454559"/>	Email address:	<input type="text" value="hazel.lawson@southlanarkshire.gov.uk"/>
Postal Address:	<input type="text" value="Council Offices, Almada Street, Hamilton, ML3 0AA"/>		

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

- an individual go to 2a/b
on behalf of a group or organisation 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 a group or organisation

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 of your response to be made available?

- Yes
No

3. We will share your response internally within RoS and with other Scottish Government departments who may be addressing the issues you discuss. They may wish to contact you 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