Implementation of the Land Registration etc. (Scotland) Act 2012

Consultation

September 2013

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Introduction

Purpose

This is a consultation on the implementation of the Land Registration etc. (Scotland) Act 2012[1] (the Act). It is being carried out on behalf of the Scottish Ministers by the Keeper of the Registers of Scotland (the Keeper). The purpose of the consultation is two-fold: (1) to inform stakeholders of changes necessary for implementation of the Act and the Land Register Rules (the Rules) that will be made under the powers contained in the Act; and (2) to seek views on proposals for the policies to be adopted by the Keeper under the Act.

The commencement of the main provisions of the Act that implement the new scheme of land registration is linked to the designated day as prescribed under section 122 of the Act. The Keeper is currently working to commence the Act in late autumn 2014. The date of the designated day will be set by an order made by the Scottish Ministers at least six months in advance of the day itself.

Background

The Act followed on from, and developed, the recommendations made by the Scottish Law Commission in their Report on Land Registration published in February 2010. The primary purpose of the Act is to reform and restate the law on the registration of rights to land in the Land Register of Scotland. The Act achieves this by repealing much of the current land registration statute, the Land Registration (Scotland) Act 1979 (the 1979 Act) and the Land Registration (Scotland) Rules 2006[2] (the 2006 Rules) made under that Act, and puts in place a new scheme of land registration.

The Act realigns the law of land registration with property law. The Act also puts on a statutory footing many of the policies and practices the Keeper has developed since the introduction of the land register in 1981. The Act introduces new concepts, such as advance notices, and new rules that will govern how the Keeper registers deeds and makes up the register. As a result, the Keeper has conducted a review of existing land register policies and practices to ensure that they are compliant with the new law and identified some new policies and practices that will have to be put into place.

Implementation of the Act will need subordinate legislation to be made before the designated day, including new Rules.

This consultation document follows the order of the parts and sections of the Act. Any reference to a section, part or schedule, without further identification in this document, refers to the Act.

1The Act may be found at http://www.legislation.gov.uk/asp/2012/5/enacted

2The 2006 Rules may be found at http://www.legislation.gov.uk/ssi/2006/485/contents/made

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Part 1 - Land Register Introduction

1.01. Part 1 provides for the continuation of the land register, outlining the duties of the Keeper in respect of making up, maintaining and protecting the Land Register of Scotland.

1.02. The Act provides a statutory footing for the four constituent parts that comprise the revised land register. These are the:

- title sheet record;
- cadastral map;
- archive record; and
- application record.

Title Sheets and the Title Sheet Record

1.03. Sections 3 to 10 outline obligations on the Keeper when making up and maintaining a title sheet for each registered plot of land.

1.04. Section 3(1) and (6) establish the key principle that the Keeper must make up and maintain a title sheet for each registered plot of land and that, subject to exceptions, there should be only one title sheet for each registered plot. A plot of land is defined as an area (or areas) of land all of which are owned by one person or one set of persons. For these purposes, a separate tenement, e.g. minerals or salmon fishings, is treated as a plot of land.

1.05. Under the 1979 Act, the land register was a register of interests in land, and therefore the interests of landlord and tenant in a long lease were registered in separate title sheets. The Act now provides for a register of rights in land with the unit of registration being the plot of land.

Lease Title Sheets

1.06. Although the title sheet for a plot of land can include registered leases, under section 3(2), the Keeper has a power to make up a separate lease title sheet. Under this subsection, the Keeper has discretion on whether to create a separate title sheet for a registered lease or whether to include the tenant's right in the landlord's title sheet. The latter approach would treat a long lease in the same way as other subordinate real rights that appear on the title sheet for the area of land to which they relate, for example heritable securities.

1.07. The Keeper considers that use of a single title sheet could result in the title sheet being difficult to interpret, particularly where a number of leases relate to the same plot of land or there are complex commercial leases. In addition, where the plot and the lease are each affected by other subordinate rights and encumbrances, a single title sheet could be very lengthy. Rather than deciding whether to issue a lease title sheet on a case by case basis, the Keeper proposes to adopt a policy of issuing lease title sheets in all cases. This will allow for simpler presentation of information and will provide applicants and their solicitors with certainty of the Keeper's treatment of their application.

1.08. A separate title sheet for a head or sole lease also allows more information on the register in terms of section 9(1)(c) under which it is not competent to disclose on a title sheet, other than a lease title sheet, a long sub-lease.

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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?

Yes ☒ No ☐

If not, please explain why:

a consistent approach will provide clarity and certainty

Title Sheet Structure

1.09. Section 5 sets out the structure of the title sheet. The current structure is retained, although there are some changes required within the individual sections. The title sheet will comprise the:

- property section;
- proprietorship section;
- securities section (formerly the charges section); and
- burdens section.

Property Section

1.10. The property section provides a description of the registered plot and rights pertaining to it. Section 6 details what information the Keeper is required to enter and, while the property section remains substantially the same as under the 1979 Act, there are some points that are new or require change.

1.11. Section 6(1)(a)(ii) requires the title sheet to reflect "the nature of the proprietor's right in the plot of land". This change in language reflects what is being registered: the plot of land under the Act rather than interests in land under the 1979 Act.

1.12. This entry can be considered the equivalent of the "interest" field in the current property section and the Keeper proposes that from the designated day the interest field should be renamed "Real Right". The details entered in this field will change from the existing options of "proprietor" or "tenant" to that of "ownership" or "tenancy".

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

Yes ☒ No ☐

If not, please explain why:

on balance we agree with these changes, which will help to reinforce to users the differences in the new regime

1.13. Section 6(1)(f) requires that where more than one title sheet exists for an area of land, e.g. one for ownership of the land, one for minerals or salmon fishings, or a lease title sheet, the Keeper must cross-refer on each title sheet to the title numbers of the other(s). This requirement does not apply to tenements or other flatted buildings, which are discussed later. The Keeper proposes that the other title numbers are presented in the form of a schedule in the property section.

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?

Yes ☒ No ☐

If not, please explain why:

1.14. The property section currently sets out the "date that the title sheet is updated to". However, there are no current or new legislative provisions requiring such a date. The Keeper considers that the date will continue to be of assistance to reflect that a non-registration event, such as combining cadastral units, has taken place or for users of our Registers Direct service easily to identify when a title sheet was last updated. The Keeper therefore proposes to provide for this information in the Rules.

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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?

Yes ☒ No ☐

If not, please explain why:

1.15. The title sheet currently includes a field for map reference details. This provides national grid reference details identifying the Ordnance Survey (OS) map tile on which the registered subjects are located. This information is currently required by the Keeper to tie the title plans to their location within the underlying map base. This requirement falls with the introduction of the cadastral map. Therefore, the Keeper proposes to omit the map reference from title sheets from the designated day.

1.16. Section (6)(1)(a) of the 1979 Act provides that where a registered title extends over two hectares on the OS map the Keeper must calculate the size and specify that on the title sheet. This has not been replicated in the Act. Modern mapping GIS systems can readily identify plots of land that extend to more than a specified area and the Keeper does not intend to include such information in the title sheet.

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?

Yes ☐ No ☒

If not, please explain why:

This information can be extremely useful and having it readily available on the title sheet is convenient for the user. Parties reading title sheets do not necessarily have ready access to "modern mapping GIS systems". We also disagree with the proposal in 1.15 to discontinue showing the national grid reference. While the Registers are able to refer to the cadastral map for identification, others will not have access to the rest of the casdastral map, and so this identifying information can be useful for a variety of reasons.

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Proprietorship Section

1.17. The proprietorship section of the title sheet identifies who owns the plot of land described in the property section and, if appropriate, their respective shares. Under the Act, the format remains similar to the current section; it will include the name and designation of the proprietor(s) as well as the respective shares in respect of common ownership. There are special provisions in respect of the proprietorship section of shared plot and sharing plot title sheets and these are discussed later in this document. There are a few points of detail that are new or require changes.

1.18. The current proprietorship section includes the consideration disclosed in the deed being registered (i.e. the payment or other thing exchanged for the property interest registered). The Keeper is of the view that the consideration should continue to be disclosed in the title sheet, acknowledging that this information may be of value to third parties such as lenders, District Valuers and Local Authority Assessors.

1.19. Even if omitted from the proprietorship section, the information would still be available, should it be required, by obtaining an extract of the relevant disposition from the archive record.

1.20. The Keeper proposes from the designated day to continue to disclose the consideration in the proprietorship section and to provide for this in the Rules.

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?

Yes ☒ No ☐

If not, please explain why:

1.21. The 2006 Rules provide that the proprietorship section shall include the date of entry of the current proprietor. The legal significance of the date is generally restricted to the parties involved in the transaction (e.g. it determines the date the grantee is entitled to possession). As such, the information will typically be included in the disposition and the missives but it is not clear that there is any value in capturing that information on the title sheet. On the occasions that the information is of relevance to third parties, it could be obtained from the deed in the archive record. The Keeper considers that the date of entry, as an off-register event, should not be included in title sheets from the designated day. Notwithstanding that the date if entry will not be entered, the date of registration

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of a deed will continue to appear in the title sheet with the entry for the relevant deed.

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

Yes ☐ No ☒

If not, please explain why:

The date of entry can be relevant for a number of reasons. For example in cases where there is liability for service charge (e.g. in a housing development), the liability for such costs and the date on which these should be apportioned is the date of entry, not the date of registration. This date may be relevant for the 6 month rule that must be complied with under the CML handbood requirements. It will add to costs and time if solicitors have to order a copy of the relevant disposition from the Archive Record every time to check this information. There are already extreme cost and time pressures on residential conveyancing transactions.

Securities Section

1.22. Section 8 relates to the securities section of the title sheet. The securities section is a change of name for the current charges section to align with Scots law terminology of real rights in security. The renamed section will continue to set out details of any heritable securities relating to the plot or lease, noting the name and designation of the creditor.

Overriding Interests

1.23. An overriding interest is a term used in the 1979 Act to describe an encumbrance that is (i) valid, notwithstanding the fact that it does not appear in the land register, and (ii) capable of being noted in the land register. The interest does not require to be registered to become real or valid. Such an interest is noted for information only.

1.24. The 1979 Act detailed overriding interests that must never be noted on the land register, along with those that could or must be noted (sections 6(4) and 28(1)). However, it created a general rule that a party would take a registered title free from any encumbrance not reflected on the land register; so overriding interests had to be excluded from this general rule.

1.25 The Act works on the principle that a person should take title free only of encumbrances that should have appeared on the registered title but did not. The Act discontinues the term "overriding interest" in relation to off-register rights and limits the list of off-register rights capable of being entered on the register to three: servitudes created other than by dual registration; core paths made under the Land Reform (Scotland) Act 2003; and public rights of way. Where the Keeper is satisfied of their existence, these off-register rights will be entered in the title sheet.

1.26. All other off-register rights will cease to be relevant from a land registration perspective unless there is a clear read across to property law. It follows that from the designated day, existing title sheets that note overriding interests as set out in the 1979 Act, other than those required to be entered, become inaccurate. The Keeper is

investigating how to remove overriding interests from title sheets in a structured manner and, from the designated day, would accept a request for rectification to remove them from a title sheet not yet updated under the structured approach. Paragraph 3 of Schedule 4 makes provision for altering the title sheet accordingly.

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

Yes ☐ No ☐

If not, please explain why:

Servitudes

1.27. Servitudes are subordinate real rights that can be incorporeal pertinents for those in whose favour they are granted or encumbrances for those whose property is burdened. They are rights that can be created either on- or off-register.

1.28. As well as identifying when a property is burdened or benefited by a servitude, the Keeper's current policy, in respect of the benefited property, is also to identify, in the property section of the title sheet, the deed that created the servitude right. This policy is not derived from a legislative requirement in the 1979 Act nor the 2006 Rules, but is an additional service provided by the Keeper. The Act does not make specific provision for this and the Keeper is considering discontinuing the policy. The servitude rights would continue to be entered in the property section and the burdens section of the benefited and burdened property title sheets respectively. Where the servitude is subject to conditions, an entry will continue to be made, as at present, in the burdens section of the benefited property.

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

Frequently ☐ Infrequently ☐ Never ☐

Please give reasons for your answer:

The date of the deed creating a servitude is extremely relevant for the purposes of determining the extent of the servitude, what the intention of the parties was at the time of the servitude and whether any different use of it could be an increase on the burden etc. We would suggest that failure to refer to the date of the deed could make the title examination and interpretation process more difficult and we therefore would recommend that the Keeper continues to note these details.

Matrimonial Homes and Civil Partnership Occupancy Rights

1.29. The Matrimonial Homes (Family Protection) (Scotland) Act 1981 (the 1981 Act) and the Civil Partnership Act 2004 provide protection to non-entitled spouses/civil partners relating to occupancy rights in their family home. These rights arise as an incident of marriage or civil partnership and the non- entitled spouse/civil partner does not require to take any action to constitute the right. The right is to occupy the family home and it does not confer a heritable right or title on the spouse or civil partner.

1.30. An occupancy right of a non-entitled spouse or civil partner is included within the definition of "overriding interest" in the 1979 Act (as amended); however, it is one of the exceptions to the noting provisions contained in section 6(4) of the 1979 Act - it is not capable of being noted on the title sheet. The practice, instead, has been to put a negative statement in the proprietorship section of the title sheet confirming there are "no subsisting occupancy rights" of previous proprietors, as required by rule 5U) of the 2006 Rules.

1.31. The intention was that the statement provides some protection to a purchaser, who can, if the information in the statement is incorrect, claim compensation from the Keeper. As an overriding interest the rights, of course, subsist without registration.

1.32. The Act is silent on occupancy rights. As noted above, the rights are an incident of marriage or civil partnership and now prescribe in two years rather than the original five. Protection for third party purchasers was introduced in section 6(1A) of the 1981 Act by the Family Law (Scotland) Act 2006.

1.33. The Keeper proposes to cease, from the designated day, entering in the title sheet the note that no occupancy rights subsist. Evidence in support of occupancy rights will no longer be required and any questions regarding these will be removed from the application forms.

Question 10: Do you agree that the land register should not reflect information regarding occupancy rights?

Yes ☒ No ☐

If not, please explain why:

On balance we agree that this makes sense for the reasons stated. Practitioners should be investigating the position re occupancy rights as part of their title due diligence. Other statutory protections exist. It would be interesting to know whether compensation has ever been paid by the Keeper as a consequence of an incorrect statement re occupancy rights.

The Cadastral Map

1.34. Section 2(b) introduces the cadastral map as part of the land register. The term "cadastral map" is widely used internationally to recognise a map defining land ownership information.

1.35. A basic tenet of the Act is that there should be no registration without mapping. The provisions for the cadastral map set out in sections 11, 12 and 13, aim to ensure that this is the case.

1.36. Section 11(1)(a) narrates that the cadastral map is a map showing the totality of registered geospatial data (other than supplementary data in the individual title sheets). The cadastral map depicts and combines the information contained in the individual cadastral units. A cadastral unit is a unit that represents a single registered plot. The map must show for each cadastral unit: the cadastral unit number (which is to be the title number for the plot); the boundaries of the unit; and the title number of any registered leases relating to the unit. The cadastral map must also depict registered rights pertaining to the plot of land so it is not simply limited to defining ownership boundaries. It must also show rights and encumbrances that affect the registered plot of land.

1.37. In section 3(4), a plot of land is defined as an area or areas of land all of which are owned by the same person or set of persons. A separate tenement, such as minerals or salmon fishings, also constitutes a plot of land. Additionally, land is described in section 113 as including: (a) buildings and other structures; (b) the seabed of the territorial sea (including land within the ebb and flow of the tide); and (c) other land covered by water.

Discontiguous Plots

1.38. Section 3(1) states that the Keeper must make up and maintain a title sheet for each registered plot of land, and the Keeper has considered the interaction of this with the provision that a cadastral unit represents a single registered plot of land.

1.39. The Keeper proposes that where one person or set of persons own discontiguous areas of land that are relative to each other and have a common purpose, these areas may be grouped together on one title sheet and represented on the cadastral map as a single cadastral unit where the Keeper considers it appropriate. That is to say that a single cadastral unit may consist of more than one area and will be represented on the cadastral map as such. An example could be a farm that extends to both sides of a public road and is clearly operated as a single entity despite being physically split into two parts.

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

Yes ☒ No ☐

If not, please explain why:

This is a sensible proposal and avoids unnecessary multiple cadastral units and title numbers

Registration of the Seabed

1.40. The 1979 Act (i) defined land to include land covered by water, (ii) defined operational areas by registration counties, and (iii) required that subjects be identifiable on the OS map. Taken together, these created some uncertainty as to the operational extent of the land register. The OS map does not extend to the seabed and registration counties end at the mean low water mark of spring tide (MLWS). The new definition of land in the Act puts beyond doubt that the land register covers the full extent of the seabed in Scottish territorial waters: that is from the baseline (generally the coast) to the 12 nautical miles limit.

1.41. Under the terms of the Act, the cadastral map must be based upon a base map. The Act prescribes that the base map is the OS map or another system of mapping that meets the requirements of the Scottish Ministers or a combination of the OS map and such other system. At the designated day, the base map will be the OS map. The OS map is primarily land-based and the Keeper has therefore considered how the boundaries of a plot of land that lies partly or wholly outwith the OS map will be represented on the cadastral map.

1.42. The Keeper proposes to take a mapping approach for seabed plots by introducing a supplementary mapping system and base map. The Keeper has further considered the division and demarcation of the territorial seabed and proposes to treat the seabed as a single operational area.

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

Yes ☐ No ☐

If not, please explain why:

It will depend on how this is going to be presented in fact, and how easy it will be to identify the areas concerned. Areas occupied as pipelines for example may be small areas and difficult to locate. One suggestion might be to identify the segment of the seabed according to the county next to which it is located e.g SEA-ABN for seabed located off the Aberdeen coast

1.43. Where does the land end and the sea begin? The OS map extends to the MLWS. The foreshore is defined in Scots property law as land lying between the high and low water marks of ordinary spring tides. The seabed in Scots property law begins at the low water mark and is that area normally covered by water that lies between the foreshore and the limit of the territorial sea. The Keeper proposes to divide the area covered by registration into the following:

- land-based only with a traditional county prefix (including the foreshore down to MLWS); and
- seabed only with an appropriate seabed prefix.

1.44. To manage cadastral units that straddle land and sea (and therefore two separate mapping systems),

the Keeper intends to create two title sheets and two cadastral units to meet at the MLWS. This will operate from the designated day until a single mapping system can be brought into operation and policy reviewed.

Description of Seabed Plot

1.45. Conditions of registration for an unregistered plot are that "the deed should so describe the plot as to enable the Keeper to delineate its boundaries on the cadastral map". With traditional land-based titles, this is achieved by incorporating a description of the plot and a plan defining the area and surrounding detail, in the constitutive deed. For applications to register seabed, surrounding detail may be limited at best. The Keeper's proposed policy in respect of seabed applications is that the deed to be registered should include:

- a verbal description of the subjects;
- a description of the plot using longitude and latitude coordinates. (This may take the form of a table annexed to the deed); and
- a plan defining the plot, including a location plan in relation to the coast of Scotland (where appropriate).

1.46. The property section of the resultant title sheet will describe the plot by reference to the cadastral map and the Keeper will incorporate the table of longitude and latitude coordinates as part of the property description.

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?

Yes ☒ No ☐

If not, please explain why:

See our comments above. A location plan will be essential, but a County based prefix will also immediately identify the general location of the seabed plot in relation to the land mass of Scotland.

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

Yes ☒ No ☐

If not, please explain why:

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?

Yes ☐ No ☐

If not, please explain why:

There may be limited circumstances where this would be relevant, but as a practical option where identification of the plot in question would otherwise be difficult, the Keeper could adopt this approach.

Natural Water Boundaries

1.47. The Keeper's current policy where the subjects are bounded by or include part or all of a natural water feature, is that indemnity is excluded in respect of any alteration of the boundary caused by alluvion. This enables the Keeper to rectify[3] the title where the boundary is changed by alluvion.

1.48. The Keeper's current practice is to map the title to the fullest extent, providing a particular reference by arrows and letters on the title plan to the natural water boundary from which indemnity is excluded. An exclusion of indemnity note is added to the property section.

1.49. The position is altered by section 73(2)(i), which states that the Keeper does not warrant that alluvion has not had an effect on a boundary. Warranty is therefore statutorily excluded from natural water boundaries in respect of alluvial change and the Keeper is therefore no longer required to reflect that the water boundary is excluded from warranty. From the designated day, no note will be appended to the property section or reference provided to identify the natural water boundary on the cadastral map.

Supplementary Data - Tenements

1.50. Section 16(1) narrates that the "Keeper may, instead of representing each registered flat in the building as a separate cadastral unit, represent the building and all the registered flats in it as a single cadastral unit." This enables the Keeper to continue to map the tenement steading being the tenement and land pertaining to it, including common and exclusive areas relating to individual flats. In terms of section 16(1), the tenement steading and all registered flats within it become a single cadastral unit. Each flat will have a separate title sheet, the property section of which will describe the flat by reference to the cadastral unit number of the tenement. Also, the Keeper's current policy in relation to flats with exclusive or common pertinents narrated in title deeds and identified on a plan is to reproduce

these, along with the steading extent, on the title plan for the individual registered titles.

1.51. The Keeper intends to continue this policy under the Act. However, section 11(1)(a) states that the cadastral map is "a map showing the totality of registered geospatial data (other than supplementary data in individual title sheets)". Therefore, where particular data is classed as supplementary, it will not be shown on the cadastral map, but be captured as ancillary data.

[3]1979 Act sections 9(3) (a) (iv) and 12(2).

1.52. For flats, where information is pertinent only to an individual title and not the whole tenement, the Keeper will deem this to be supplementary data, and as such it will not be reflected as part of the cadastral unit on the cadastral map. The information is, however, captured and reflected on a supplementary data plan to the title sheet in order to support and reflect the terms of the title sheet.

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

Yes ☒ No ☐

If not, please explain why:

Supplementary Data- Leases

1.53. A similar scenario exists for leases. A cadastral unit is created for the plot of land and any registered lease affecting that plot will relate to that cadastral unit. The Keeper can make up a lease title sheet subsidiary to the landlord's title sheet for the plot of land but it will not have a separate cadastral unit. Whilst the registered lease will be referenced on the cadastral unit for the plot of ground, any information relevant only to the lease will be classed as supplementary data. The Keeper proposes, whether the lease is co-extensive with the landlord's title or affects only part of the plot, that the information pertinent to the lease will be reflected on a supplementary data plan.

1.54. It should be noted that where information is captured and classed as "supplementary data", this information forms part of the title sheet. It does not form part of, nor is it reflected on the cadastral map. An extract of this information would be available as part of the title sheet.

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?

Yes ☐ No ☐

If not, please explain why:

If the area leased comprises all of the cadastral unit, then this should be stated. While a plan is always useful, it needs to be discernable from the plan of the leased subjects and the cadastral unit plan to which it relates, where within the cadastral unit the leased subjects are located. Accordingly where it is possible to identify this on the cadastral map this should be shown.

25-Metre rule

1.55. Section 16(3) restricts the application of the single cadastral unit approach where land pertaining to the tenement or flatted building extends to more than, or lies further than 25 metres from, the tenement or flatted building. Under this section, where a common pertinent exceeds or lies further than 25 metres from the building, that area cannot form part of the cadastral unit for the tenement. The area must be removed from the tenement steading extent/cadastral unit boundaries. A new cadastral unit and title sheet will be created for the area.

1.56. The Keeper's proposed policy is to remove the entire area from the cadastral unit for the tenement block, not simply that part falling more than 25 metres from the building. As the area is owned in common, it will be designated as a shared plot title sheet (these are discussed later) with the individual flatted properties being the sharing plots.

1.57. The 25-metre rule will generally only affect newly-built flatted properties or subdivided buildings. This is because it is disapplied by paragraph 25 of schedule 4 where any flat from the block has been recorded or registered in the General Register of Sasines (the Sasine Register) or land register, prior to the designated day.

1.58. The 25-metre rule does not apply to exclusive pertinents. Where a pertinent is exclusive to one flat, it is considered to be discontiguous to that flat and therefore forms part of the tenement cadastral unit.

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?

Yes ☒ No ☐

If not, please explain why:

Shared and Sharing plots

1.59. Section 17 introduces the concept of shared plot title sheets. This section provides a scheme to define common and shared plots and to provide separate title sheets for such areas. These are required due to the terms of section 3(1) and (6), which set out the key principle that each registered plot of land should have a separate title sheet and that there should usually be only one title sheet for each plot of land. Where a plot of land is owned in common that title sheet may be designated a shared plot title sheet.

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1.60. The Keeper's current policy is to include any rights to shared or common areas in the title sheets of the primary properties. This means that the shared area is registered under and appears in 1.10. the title sheet of all the associated primary properties. In essence, the same plot of ground is registered many times to the extent of each share and forms part of multiple title sheets.

1.61. Under the Act, the common area of ground will be allocated a separate cadastral unit and may be designated as a shared plot title sheet. Those properties with a share in the common area are known as sharing plots and their property sections must disclose the title number of the shared plot and the respective share.

1.62. The proprietorship section for the shared plot title sheet must set out ownership of the plot and, in terms of section 7(1)(b), the respective shares of the proprietors. The proprietorship section of the shared plot title sheet will list the title numbers of the sharing plots rather than repeating the names and designations of the proprietors of all the sharing plots. In addition, it will disclose the respective share for each sharing plot.

1.63. In order to comply with the general conditions of registration, from the designated day an application that includes an area in common ownership should quantify that share, otherwise the application falls to be rejected. Paragraphs 8 to 11 of schedule 4 provide an exception for common areas and developments begun before the designated day, where the common area is included in two or more existing title sheets that do not specify the respective shares. However, the exception will not apply to developments where only one title has been registered or to new developments.

1.64. The Keeper's view is that where a deed does not expressly state the share, the common law rule applies i.e. that the share is equal amongst the proprietors. Some historical conveyancing deeds do not specify the shares but identify the individual properties that have a share, e.g. between the proprietors of 3 to 12 Main Street. In such a circumstance, the deed inducing registration should not merely refer back to the historical conveyancing but should specifically narrate the share.

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

Yes ☐ No ☒

If not, please explain why:

This may require extensive investigations to ascertain all of the potential sharing plots in some circumstances. The Keeper should not insist on this information unless it is easily discernible. Guidlines should be provided for this topic. In a large development of many houses and flats, it could prove extremely difficult to ascertain the actual number of affected units. Also, consider the situation where one deed inducing registration where there is a shared plot specifies a different quantum from another deed relevant to the same shared plot. which would prevail? and who would decide?

1.65. The Keeper's proposed policy in terms of section 3(1) and (4) -where discontiguous plots of land are related to each other by ownership and share a common purpose - is that such areas may be grouped together as a single cadastral unit.

1.66. The Keeper also proposes that where multiple plots of land, the use of which may differ (e.g. footpath, car parking area, amenity ground), are shared in common by the same proprietors, whose share is the same to all areas (and the ownership to the shared areas is by virtue of ownership of a primary plot) that the discontiguous plot approach should apply here. The individual shared areas may be grouped together to form a single registered plot forming one cadastral unit.

1.67. The Keeper considers that it would be clearer if plots of land, irrespective of their use, owned in common by the same group of persons, with the same shares in each plot, should be considered as a single plot of land in terms of the Act.

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?

Yes ☒ No ☐

If not, please explain why:

Part 2 - Registration

Registrable Deed

2.01. In terms of section 21 (1), an application for registration must be in respect of a "registrable deed". In accordance with section 49(1), a deed is registrable only if and in so far as its registration is authorised by the Act or any other enactment.

2.02. The Keeper intends to produce in advance of the designated day a list of registrable deeds together with the enactment under which they are registrable. This will assist an applicant to identify on the application form, which type of deed is being submitted for registration by reference to the list of registrable deeds. In cases where an

applicant wishes to submit a deed not on the published list, the application form will require specification of the enactment and provision under which that particular deed is registrable.

2.03. The Keeper proposes that the application form requires completion of the type of deed and its authorising enactment.

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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?

Yes ☐ No ☒

If not, please explain why:

Not all deeds that are currently in routine use in conveyancing transactions are "authorised by statute", and we therefore have a concern that the provisions of the Act will exclude from registration a number of deeds that are currently registrable, but for which there is no legislative authority.

We consider that this is a fundamental omission from the 2012 Act, and that consideration should be given to identifying deeds, currently routinely registered but in respect of which it would cease to be competent to register them post designated day.

There are a number of deeds that are registrable but the authority for which comes from the common law, and it may be that serious consideration needs to be given to amending legislation that will widen the scope of the type of deed that can be registered.

In the list of Acts there is a notable omission of the Title Conditions (Scotland) Act 2003 (although we appreciate that section 49(2)(c) covers other enactments), however the 2003 Act is an Act that authorises deeds that create real burdens, such as Deeds of Conditons and Deeds of Real Burdens. It must be the case that section 75 of the 2003 Act, if not actually authorising a Deed of Servitude as a registrable deed expressly, does so impliedly. However other deeds such as variations or discharges of servitudes which are in common use are not so authorised. There may be others where there could be an argument about whether the "implied" authorisation allowed by section 49 actually applies. And there are likely to be many other forms of conveyancing deed or references to rights within deeds, which address particular conveyancing requirements, but which have no statutory authority and which this provision will render incapable of registration.

This requirement for statutory authority also threatens to have a stranglehold on creativity and flexibility in Scottish conveyancing, which in the 21st century and a rapidly changing world needs to be capable of evolving, and addressing changing circumstances and opportunities.Global economic effects have generated creative funding arrangements, new conveyancing models, such as those being developed in the renewables sector, could potentially become more common. We cannot predict what types of conveyancing structures may be needed for the future. It would be an unfortunate restraint on the adaptablity of Scots law if this ability to evolve and innovate were to be curtailed, or become reliant on the passing of legislation before it can be considered competent.

Supporting Documentation

2.04. In terms of section 21, where an application fails to meet the general application conditions set out in section 22 or the applicable conditions of registration set out in sections 23 to 28, then the application falls to be rejected. One of the general application conditions is that the application is in the form prescribed by the Rules, and this will require that the prescribed application form be used.

2.05. Section 22(1)(a) also requires that the application is such that the Keeper is able to comply with her duties under Part 1. This puts the onus on the applicant to provide the Keeper with the documents and information required to enable the Keeper to make up the component parts of the title sheet and the cadastral map. If such a document is not submitted so as to satisfy the Keeper, the Keeper is required under section 21 (3) to reject the application.

2.06. It is important to note that the onus applies equally to applications subject to sections 23 and 26 (transfer of unregistered plot and deeds relating to registered plots respectively) and to section 25 applications where automatic plot registration is triggered in respect of certain deeds.

2.07. The Act introduces additional triggers for first registration and section 24 specifies a number of circumstances where the application to register a certain deed will trigger automatic registration of the underlying plot of land under section 25. The list includes long leases, assignations of lease and subleases. Consequently, where a landlord's plot of land is unregistered an application in respect of a grant of lease will automatically trigger first registration of that plot to the extent of the leased subjects. Section 25 sets out the conditions of registration in relation to such applications.

2.08. Given the terms of section 22(1), where a person is submitting a long lease, assignation of lease or sublease, the onus will be on them to submit the documents required for registration of the underlying plot at the same time. Further guidance in respect of automatic plot registration will be issued in advance of the designated day.

2.09. Clarification of the types of documents that should normally accompany certain applications will help ensure that applications are in the acceptable form and help avoid rejections. Section 115(1)(b) allows regulation of the procedure in relation to applications for registration to be set out in the Rules; however, given the variety of applications possible, the Keeper considers it impractical to provide an exhaustive list of accompanying documents to cover every potential scenario. Prescription in subordinate legislation would preclude flexibility in this regard and therefore inclusion in the Rules does not appear appropriate.

2.10. In order to assist applicants as to what is acceptable in terms of section 22(1)(a), the Keeper intends to develop and publish suitable guidance for applicants on the requirements of the Act.

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

Yes ☒ No ☐

If not, please explain why:

Flexibility should be retained. The Registers are encouraged to produce comprehensive guidance to help, where appropriate in collaboration with practitioners, to ensure that sensible workable guidelines for this and other matters are prepared and made available for the designated day. And that these are kept under review as issues inevitably emerge after the designated day, that have not been anticipated or identified.

Development Plan Approval

2.11. The Keeper recently launched the Development Plan Approval service, which provides developers with a means to identify title extent issues prior to the sale of individual new-build house plots from their development. Use of this service will help prevent applications from being rejected on extent issues.

2.12. Sections 23(1)(c), 25(1)(b) and 26(1)(d) state that the deed submitted for registration must describe the plot to enable the Keeper to delineate it on the cadastral map. There is no specific requirement that a plan must always be used and absence of a plan would not automatically in itself be grounds for rejection provided the plot could be sufficiently identified. However, applicants should be wary of placing reliance on a written description. Many older conveyancing descriptions would not enable a property to be delineated on the cadastral map. Descriptions based solely on a postal description (e.g. 20 High Street) or a general reference (such as "the farm and lands of x") would not suffice. Detailed bounding descriptions are required. Where a plan is available, it should be checked to ensure that it meets the Keeper's criteria for enabling identification and plotting on the cadastral map. The Keeper envisages that new market-based services will be developed to provide support to applicants. Such services would provide applicants with assurance that a description or plan will enable the Keeper to delineate a property on the cadastral map. (It is likely that such products will replace the current Plans Comparison Report.)

2.13. Where there has been prior development plan approval, the individual house plots, boundary fences, parking areas and roads will be identified on the development plan. Therefore, provided the deed in question refers to both the relevant house plot number and the particular approved development plan in the description of the subjects, this will be sufficient for identification and mapping purposes without the need for a paper plan to be annexed.

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?

Yes ☒ No ☐

If not, please explain why:

The Development Plan Approval service has the capacity to bring speed and certainty to plot registrations, particularly in the early days of a development. We hope that developers will be encourages to use this service and the advantages it brings.

There might need to be some checking/cross-referencing procedure required for purchasers solicitors to be sure that the plot location details they have been given by the developer coincide with the details that the Keeper holds under DPA. Perhaps something like a preview of the relevant part of the cadastral map which will have already been prepopulated from the DPA.

Validity of the Deed being Registered

2.14. In addition to the requirements set out above, it is a condition of registration that the deed submitted is valid at the date of registration[4] and therefore that all links in title should be in place. As part of the registration process, the Keeper currently examines all links in title between the deed inducing registration and the last recorded title, as well as confirmations used as links in title within the prescriptive progress.

2.15. For applications under the Act, the Keeper, whilst fulfilling her duty to keep the register accurate in fact and law and to be satisfied that deeds are valid, will place greater reliance on the answers to questions on the application forms as already happens in the Automated Registration of Title to Land (ARTL) service. For example, rather than submitting links in title for examination, solicitors making an application for registration could be asked to certify that the appropriate valid links in title exist and have been examined. Another example (where appropriate) would be confirmation by an applicant's agents either that section 190 of the Crofters (Scotland) Act 1993 does not apply or that the steps required under that section have been complied with.

2.16. Under the Act, registration of a title does not, in most cases, preclude the application of property law principles and remedies. In particular, the 1979 Act's strong protection against rectification for current proprietors in possession is largely removed. The duty of care to the Keeper in section 111 and the offence provision in section 112 underpin this new approach.

[4]Amendments to live deeds will no longer be permissible, see requisition policy

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General Provision about Application

2.17. There are a number of instances where the Keeper is bound to notify persons under the Act. There is, however, no provision binding the Keeper to issue applicants with an acknowledgement that their application for registration has been entered onto the application record, as is current practice. The Keeper understands that customers value the receipt of an acknowledgement as part of the registration process, both in terms of confirmation that their application has been taken on and confirmation of the title number. To this end, the Keeper intends to continue to issue acknowledgements as a matter of policy notwithstanding that this is not required by the Act.

2.18. In line with the proposed policy on notification (discussed below), it is proposed that acknowledgements will be sent by electronic means only. If a valid email address is not provided, no acknowledgement will be sent. It is proposed that the information provided in the acknowledgement will be similar to that currently issued, and will include details of the subjects, deed, parties, date of registration, application number and the provisional title number.

2.19. Section 4(1) sets out that the Keeper must assign a title number to the title sheet of each registered plot of land. Section 30(2) sets out the Keeper's duties upon completion of the registration process, which include that she must make up a title sheet and create a cadastral unit for the plot. There is no provision in the Act for a title number to be assigned when the application is entered onto the application record, as is current practice under the 1979 Act.

2.20. The Keeper understands that it is useful for applicants to know what the title number will be from the outset. For instance, if the title number is not provided and the original application remains pending, any subsequent dealing over that plot would fall to be rejected since it would fail to satisfy section 26(1) (c), which requires the deed to narrate the title number. The title number is also a unique identifier and is therefore useful where a high volume of applications is being processed.

2.21. Section 115(1)(b) can be used to provide in the Rules for the regulation of procedures in relation to applications for registration. It may be appropriate to use this power to provide that the Keeper will acknowledge entry of the application onto the application record and that a provisional title number will be allocated at that time. Upon completion of the registration process, the provisional title number will become the title number. Where a provisional title number has been allocated but the application is subsequently rejected or withdrawn, it is proposed that in order to avoid potential confusion the provisional number will be discarded and will not be used for any other applications.

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?

Yes ☒ No ☐

If not, please explain why:

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

Yes ☒ No ☐

If not, please explain why:

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?

Yes ☒ No ☐

If not, please explain why:

Continuing to provide this information is essential.

Requisition Policy

2.22. The Act sets out clear criteria for the acceptance of an application for registration. If any of the conditions contained in sections 21 to 28 (as applicable) are not satisfied then the Keeper must reject the application under section 21 (3). In terms of section 21(2), the conditions must be met as at the date of application, therefore it will no longer be possible for the Keeper to return defective deeds for amendment. In those circumstances, the only recourse would be to reject the application. A significant percentage of current requisitions relate to the deed presented for registration; under the Act the application(s) to which those deeds relate will be rejected.

2.23. Section 34(1) sets out the one-shot rule, which states that while an application for registration is pending the

applicant may withdraw it but cannot substitute the deed presented for registration or amend it. However, the Keeper may consent to substitution or amendment of an application (i.e. allow a requisition) provided the application does not already fall to be rejected. Under section 34(2), it is possible to specify circumstances in which consent to make requisitions must always be given and these can be set out in the Rules.

2.24. It is important to note that consent to requisition is always subject to the conditions of registration. If an application falls to be rejected at the date of application then no requisition or amendment can make it acceptable. Therefore, a requisition can only be made in limited circumstances where some element of doubt exists and further evidence would assist. For example:

- the reinforcement of information provided in the application as regards the existence of a public right of way, a core path, or a servitude created by prescription;
- where an extension of warranty is sought and further evidence is required. This may occur where evidence of prescriptive possession is provided in respect of an acquired right to mines or minerals but something further is needed;
- further evidence may be required in relation to the requirements for evidence set out under section 43 for prescriptive claimants;
- where the search in the Register of Inhibitions carried out by the Keeper discloses an entry, it may be necessary to request confirmation that the name match disclosed is not that of the party; and
- where a supporting deed or document has been submitted in error, it may be possible to substitute it for the correct one. For instance, in relation to deeds referred to for burdens, where more than one deed between the parties was recorded on the same day but the wrong one was submitted in error.

2.25. A strict one-shot rule under which no requisitions would be permitted was regarded as potentially unworkable in practice. Similarly, different rules for different types of application could create inequality. The Keeper therefore proposes that, in the limited circumstances where requisition will be permitted, the requisition policy should be applied equally to all application types. This must obviously be set against the clear rejection criteria set out in the Act. The Keeper does not intend to specify circumstances where consent must be given in the Rules. Clear guidance on the policy for the exercise of the Keeper's consent will be issued in advance of the designated day.

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?

Yes ☒ No ☐

If not, please explain why:

This seems to be a sensible approach, so that practitioners have certainty of a consistent approach in the circumstances where requisition is permitted. Clarity is however requested in advance of the designated day about precisely when requisition will be permitted. This may elicit a different response.

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

Yes ☐ No ☒

If not, please explain why:

More clarity is required on the Keeper's likely policies and the impact of the one shot rule on practice and pre-registration enquiries. Until this is clearer, it is not possible for practitioners to be certain whether additional Rules may be appropriate

Requisition Period

2.26. In the limited circumstances in which it is proposed requisitions will be permitted under the Act, the Keeper proposes the period for meeting a requisition be 30 days with no option for extension. Given that it will no longer be possible to amend a defective "live" deed while the application is pending, the nature of requisitions permissible under the Act will be significantly limited. In the main they will relate to the production of pre-existing documents and, as such, these should be readily available in short course.

2.27. If an applicant is concerned that he or she will not be able to meet the deadline then the application can be withdrawn under section 34(1)(a).

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

Yes ☐ No ☒

If not, please explain why:

Without having precision about the types of circumstances where requisition will be permitted, it is impossible to estimate with certainty whether 30 days would be an adequate period within which to be able to satisfy the requisition.

In the examples given in paragraph 2.24, this might involve a requirement ot obtain affidavit evidence, or locate and produce historical records, or take steps to trace individuals, which could be achievable but the timescale for doing so could prove problematic. Given the potential severity of the one-shot rule in these circumstances, we believe there is a vital role for the availability of a more robust, accessible and transparent pre-registration service to be able to identify, and communicate without equivocation, the Keeper's requirements to ensure acceptance of an application.

Notification

2.28. There are a number of instances where the Keeper is bound to make notifications under the Act. Section 40(1) provides that in relation to the acceptance, rejection or withdrawal of an application for registration, the Keeper must notify the applicant, the granter of the deed, and any other person the Keeper considers appropriate. In terms of section 40(4), notification is to be by such means as the Keeper considers appropriate, and it is proposed that such notification be by electronic means only. This is in line with the Scottish Government's digital strategy as, in practice, most applications will be made by solicitors with email facilities, and will ensure a more efficient process in terms of both time and cost.

2.29. In order to receive a notification, a valid email address for both the applicant and granter (or their agents) must be included on the application form. It is also proposed that it should be the responsibility of the applicant to provide a valid email address for the granter on the form, likely obtained as part of the process of adjusting the answers to the application form between the parties' agents during the conveyancing process. It should be noted that under section 40(6) the failure to comply with the notification provisions does not affect the competence or validity of the acceptance, rejection or withdrawal of the application.

2.30. The notification of acceptance of an application for registration is issued upon completion of the registration process. The equivalent of Land and Charge Certificates under the Act is that a person may request an extract of the title sheet under section 104. There is no duty on the Keeper to provide an extract at the end of the registration process. However, the Keeper understands that it is important for customers to be able to view the updated title sheet upon acceptance.

2.31. Section 40(5) allows the Keeper to make further provision regarding notification in the Rules. It is proposed

that the Rules provide for notifications under section 40 to be made by electronic means only as discussed above and that the notification will allow the updated title sheet to be viewed. In order to ensure the process is as streamlined as possible, the same notification will be issued to all applicants and granters irrespective of the type of deed submitted for registration. For example, a heritable creditor would receive the same notification and view of the updated title sheet following registration of a standard security, as would the registered proprietor.

2.32. An email notification will also be issued when an application for registration has been rejected. This will allow the rejection letter to be viewed, which will contain the reason for rejection noting the section of the Act under which the application falls to be rejected and other details. The documents submitted with the application will be returned by post but it will be made clear that once the email notification is sent by the Keeper no further action will be taken in respect of that application.

2.33. The Act also places a duty on the Keeper to notify in certain other circumstances, namely where there has been automatic plot registration; Keeper induced registration, a prescriptive claimant application, or a rectification. Up to date information in respect of the persons to be notified in these circumstances, will often not be available and any notification undertaken by the Keeper would need to be made using historical information contained in existing title sheets or in the Sasine Register. In certain cases, where no email address will be available, it is proposed that notification be made by post to the last known address of the person in question.

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

Yes ☐ No ☐

If not, please explain why:

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?

Yes ☐ No ☐

If not, please explain why:

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?

Yes ☒ No ☐

If not, please explain why:

Notification by the Keeper in relation to Section 25 Applications

2.34. In terms of section 25, where an application is received to register certain deeds, this will trigger the automatic registration of the underlying plot to the extent of that deed. This will occur most frequently in relation to the grant of a long lease, the assignation of an unregistered lease or the grant of a sublease.

2.35. Upon acceptance of an application for registration of a deed in terms of section 40, the Keeper must notify the applicant and the granter of the deed. In addition, where automatic plot registration has occurred, under section 41 the Keeper also has a duty to notify the proprietor of the plot so far as is reasonably practicable.

2.36. Section 41(2)(b) provides that the Keeper can notify any other person she considers appropriate. A number of potential persons may have an interest in such a registration, for example heritable creditors, liferenters and holders of other subordinate real rights. However, a notification policy based on the interests of certain persons is likely to prove problematic in practice. For instance, where automatic plot registration has taken place the only available information in relation to the other interested person may derive from a designation in a recorded title from some time ago.

2.37. In relation to a previously recorded standard security over the underlying plot, the Keeper may have difficulty confirming who the current creditor would be, and the Keeper would not be in a position to provide mortgage account

roll numbers for reference purposes. It is likely that any notification issued would be of little practical utility to the creditor notified.

2.38. The Keeper seeks views as to whether notification to the parties described above would serve any practical purpose.

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?

Yes ☐ No ☐

If not, please explain why:

Prescriptive Claimants etc.

2.39. Sections 43 to 45 set out provisions in relation to prescriptive claimant applications. For the purposes of the acceptance criteria contained at sections 23(1)(b) and 26(1)(a), a disposition will be treated as valid, despite not being so for the reason only that the person who granted it had no title to do so, provided certain conditions are met. Therefore, the prescriptive claimant provisions replace the current law and the Keeper's current policies for a non domino dispositions.

2.40. There are two steps that the applicant must take in order for such an application to be accepted. The first, under section 43(3), is that the applicant must satisfy the Keeper that the applicant has possessed the land openly, peaceably and without judicial interruption for a continuous period of one year immediately preceding the date of application. The second step requires notification and is discussed below.

2.41. The Keeper currently has policies in place for the acceptance of a non domino dispositions and it is envisaged that those policies will be applied and adapted in relation to the types of evidence required in terms of section 43(3). At the very least, there must be affidavit evidence from the applicant swearing to possession. In many cases, affidavit evidence in similar terms from neighbouring proprietors, 2. 10. including all bounding neighbours, will be required. Additional evidence may also be necessary (e.g. photographs, evidence from local authority records or utility providers, etc.).

2.42. Affidavits will require to be clear as to the area possessed and in most cases a plan should be attached. The wording of the affidavit itself must also be satisfactory and should provide information about the duration and specific nature of possession, as well as confirmation that the level of possession is attributable to ownership rather

than, for example, servitude use.

2.43. Given the complexities surrounding the evidence required and the different circumstances of individual cases, it is proposed that guidance be provided for applicants but that this not be prescribed in the Rules. The use of guidance will allow for flexibility.

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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?

Yes ☒ No ☐

If not, please explain why:

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?

Yes ☒ No ☐

If not, please explain why:

It is not clear what is meant by "required" in this question. Guidance on affidavit wording would be helpful.

2.44. In addition to satisfying the Keeper that the land has been possessed openly, peaceably and without judicial interruption for a one year period, the prescriptive claimant must also satisfy the Keeper that certain persons have been notified of the application. These persons are the proprietor, whom failing someone who can take steps to complete title, whom failing the Crown. This is designed to ensure that appropriate steps have been taken to identify and contact the last recorded or registered owner of the land.

2.45. There are two evidential steps necessary to satisfy the notification provisions. First, the applicant must satisfy the Keeper that they have identified (or taken all reasonable steps to identify) the correct person. Second, the applicant must satisfy the Keeper that they have actually carried out the notification and that the notification was sufficient in its terms. The second step will be considered below.

2.46. In terms of identification, the Keeper will require evidence of how the prescriptive claimant traced the purported proprietor's title or, if they were unable to do so, how they arrived at the person who could complete title. For proprietors, this could include evidence of searches, instructions to private searching companies and their results. For persons who could complete title this could include death certificates and confirmation with docket endorsed thereon, or the last will and testament containing a clear conveyance to the beneficiary

2.47. The prescriptive claimant will also require to satisfy the Keeper that where a purported proprietor is identified, they are still capable of being proprietor. This could involve evidence of checks with Companies House, where the proprietor is a company, or evidence of searches of the electoral rolls and other local authority registers, contact with local solicitors and local newspaper adverts, in relation to natural persons.

2.48. Where notification has been made to the Crown, the Keeper must be satisfied that it has not been possible to notify a proprietor or someone who can complete title. Satisfactory evidence, such as letters to last known addresses, contact with local solicitors or advertisements in local newspapers, could be required.

2.49. The evidence required in any given case is likely to vary greatly depending on the individual circumstances. Therefore, it will be important for the Keeper to retain flexibility as to the types of evidence that will be satisfactory in any particular prescriptive claimant application.

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?

Yes ☒ No ☐

If not, please explain why:

2.50. The underlying principle of the prescriptive claimant notification provisions is to ensure that appropriate steps are taken to trace a proprietor or someone who can take steps to complete title, and to ensure illegitimate applications are not accepted. Therefore, as noted above, in order to be satisfied that the correct person has been notified in terms of section 43(4), the Keeper will require evidence that notification has actually taken place and that it was sufficient in its terms.

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2.51. In order to ensure the appropriate notification has taken place, it is proposed that the Keeper prescribes a style for giving notice and that it should include the following points:

- identify the person being notified and the context of the notification, i.e. under section 43(4)(a), (b) or (c);
- identify the area of land in question;
- identify the person giving notice and an address to which any correspondence is to be sent;
- include a clear statement that a prescriptive claim is being sought with an explanation of the implications; and
- include a statement that the individual may wish to obtain independent legal advice.

2.52. The Keeper must also be satisfied that the notification has actually been delivered and it is proposed that notification should be by recorded delivery mail (or equivalent) to the last known address of the person identified or, as the case may be, the Crown. This will make it easier for the applicant to provide reliable evidence that notification has taken place.

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?

Yes ☐ No ☒

If not, please explain why:

There are several methods of service that provide evidence of delivery (e.g. delivery by sheriff officers or their equivalent) and depending on circumstances there should be alternatives available. Case law over the last couple of years has shown that an overly prescriptive and limited provision as to evidence of delivery can cause unnecessary problems. Prescribing only one option might result in delays, or even failure to be able to intimate at all.

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?

Yes ☐ No ☒

If not, please explain why:

See response to question 7. By all means set out the requirements in Rules, but these should provide for alternatives of service.

2.53. Under section 45(1), the Keeper must also complete notification along similar lines to the applicant's. A person who is notified under section 45(1) has the opportunity to object in writing, and if an objection is received within 60 days of the notification, the Keeper must reject the prescriptive claimant application.

2.54. It is proposed that the Keeper should only re-notify those already notified by the applicant. No further investigation on the part of the Keeper should be necessary at this stage. If the Keeper is not satisfied that the applicant has notified the correct person then the application should be rejected under the provisions set out in section 43. On the basis that the Keeper is satisfied, further Keeper notification serves as a protective measure to ensure that the true owner has been notified.

2.55. Where the prescriptive claimant has notified the proprietor or someone who can complete title the Keeper would notify that person by post to the same address used by the applicant. It is proposed that standard delivery mail is appropriate for Keeper's notification since there is no evidential requirement. Where notification is to the Crown, a form of mutually agreeable electronic notification is likely.

2.56. Section 45(2) provides that the Keeper's duty to notify only applies in so far as the Keeper considers it reasonably practicable to notify. It is suggested that the Keeper would notify in almost all cases where the prescriptive claimant has notified the proprietor or someone who can complete title since formal objection is tied to that notification. However, where there are a potentially large number of persons to be notified, the Keeper should consider alternatives (such as notification to a residents' association).

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)?

Yes ☒ No ☐

If not, please explain why:

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Land Registration Act 2012

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?

Yes ☒ No ☐

If not, please explain why:

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?

Yes ☐ No ☐

If not, please explain why:

2.57. Section 43(7) allows the Rules to make further provision about the prescriptive claimant's duty to notify. The policy intention behind the notification provisions set out in section 43 is to encourage contact between persons wishing to acquire land and owners who no longer use it. Therefore, it is proposed that notification take place at, or before, a minimum period prior to the prescriptive claimant's application being submitted to the Keeper. This will

ensure that the person notified has sufficient time to investigate the title position and take legal advice. It will also allow the parties involved time to enter into correspondence and possibly for the putative applicant to obtain a disposition.

2.58. If the notification were to take place at the time of submission of the application, the person notified would have little time to deal with the notification. The applicant would then go to the expense of submitting an application without knowing whether the person notified wishes to object to it. There is also a risk that work carried out on a submitted application may prove unnecessary if a disposition is obtained or an objection received under section 45(4). However, if the notification was made a minimum period prior to the application, any intention to contest would be communicated at an early stage and may be sufficient to stop the application going any further.

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?

Yes ☐ No ☒

If not, please explain why:

if there is to be such a minimum period it should be a short one. Most of our experiences of a non domino deeds involve situations where extensive attempts have been made to locate the owner without any success. It would be unusual for an owner to be identified, and for the prescriptive claimant to proceed with an a non domino disposition in those circumstances. It is more likely that the parties would enter into negotiations at that stage. So it should form part of the procedure and guidance that itf exhaustive enquiries have been made without success, that really, no noitifcation is necessary

Consideration might also need to be given to how the Keeper's policy in this area might be affected by, overlap with, or conflict with community right to buy proposals currently being consulted on by the Scottish Government

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

Yes ☐ No ☒

If not, please explain why:

probably too long in the circumstances outlined above.

ros.gov.uk

Land Registration Act 2012

Part 3 - Competence and Effect of Registration

Proper Liferents

3.01. A proper liferent is one of the fixed list of real rights in land in Scots law, and in broad terms it is the right to use (generally to live in) the property of someone else for a period of time (typically for life). A proper liferent is created by the registration or recording of a deed in one of the property registers, usually by standalone deed of liferent or by reservation in a disposition.

3.02. Section 51 provides for the creation of a liferent by registration of the deed in the land register. Currently the land register is a register of interests in land and where one deed contains more than one interest in land, more than one application will be required in order to register those interests and obtain the respective real rights.

3.03. Under the Act, the land register continues to be a register of rights in land but the emphasis shifts from registration of interests to registration of deeds. Upon completion of registration of a plot, section

30(2)(b) requires the Keeper to make such changes to the title sheet as are necessary or expedient. For registration of a deed, section 31(2)(a) requires her to make the necessary changes to the title sheet to give effect to the deed being registered. Therefore for a liferent created by reservation in a disposition, it will no longer be necessary to submit separate applications in respect of the ownership and liferent rights. Registration of the deed will be sufficient to transfer the property and create the real right of liferent.

3.04. Section 73 provides that warranty is given to the "applicant" at the time of registration, and in terms of a disposition the applicant is the disponee. Therefore, where a reservation of liferent is contained in a disposition, the liferenter would not attract the benefit of warranty since the liferenter is not the applicant.

3.05. Accordingly, while a real right in liferent can be created by registration of the deed alone, for example within a disposition, in order to attract warranty the liferenter would have to submit a standalone deed of liferent and separate application.

3.06. Currently, a liferent interest is reflected in the proprietorship section of the title sheet, on the basis that the right is similar, in the sense that it allows occupation, to that of ownership. Under the Act, the terms of noting such a right are changed as a proper liferent is considered an encumbrance on the plot of land and as such should be entered in the burdens section of the title sheet in accordance with section 9(1)(f). Whilst this is a significant change in terms of current practice, it aligns with property law generally as other subordinate real rights, other than securities, are entered in the burdens section

ros.gov.uk

Land Registration Act 2012

Decrees of Reduction and Orders for Rectification

3.07. Sections 54 and 55 provide for decrees of reduction and orders for rectification of documents to enter the land register by registration. Currently, effect is given to these deeds by way of rectification of the register. From the designated day, such decrees and orders will have no real effect until so registered.

3.08. It is important to ensure that these decrees and orders contain sufficient information to allow the Keeper to register and give effect to them. The Keeper has had initial discussions with the Lord President's Office on a proposal that draft styles are developed for inclusion in the Rules of Court. Some key points for inclusion in draft styles will be:

- the deed being reduced or rectified should be clearly identified by deed type, parties, registration date, etc.;
- any relevant title number(s) must be narrated; and
- a plan should be annexed where appropriate.

3.09. It is also possible for an arbitral award to be made under the Arbitration (Scotland) Act 2010 in order to reduce a deed. Where a court has ordered that such an award may be enforced, then it is registrable in the land register. The Rules of Court do not apply to arbitral awards nevertheless they must meet the requirements for registration. The Keeper intends to publish guidance in advance of the designated day on the registration criteria for such awards.

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?

Yes ☒ No ☐

If not, please explain why:

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

Yes ☒ No ☐

If not, please explain why:

Part 4 - Advance Notices

4.01. Sections 56 to 64 set out the new scheme of advance notices, which will provide protection for the grantee of a deed during the time between taking delivery of the deed and registration. The entry of an advance notice in the application record (for Dealings with Whole and Transfers of Part) or the Sasine Register (for First Registrations) ensures that during the next 35 days no competing deed or advance notice can beat the protected deed in any race to the register.

4.02. The Keeper proposes to keep the process of applying for an advance notice simple by developing a bespoke advance notice form, which will comprise both the application form and advance notice in one. Rule 2 of the Register of Sasines (Application Procedure) Rules 2004[5] states that a Sasine Application Form (SAF) is a prerequisite for a recording in the Sasine Register. However, it would be possible to amend the Rules under section 117 of the Act to allow for a new combined application form/ advance notice rather than amending the currently prescribed SAF. The submission process for advance notices will be completely electronic for dealings with the whole of a registered title and, where possible, for transactions over part of a registered title, allowing for a quick and efficient application process for advance notices.

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

Yes ☒ No ☐

If not, please explain why:

4.03. In accordance with section 56(4), provision is to be made as to the description to be contained in an advance notice over an unregistered plot of land or lease that will be recorded in the Sasine Register. It is proposed that the requirements for recording an advance notice in the Sasine Register will include the county to which the subjects relate, a description of the subjects and, where the intended deed is a new breakaway deed, that a plan is included with the advance notice to allow the plot of ground to be identified. For advance notices to be recorded in the Sasine Register, there is no requirement to show the advance notice on the cadastral map. However, where the intended deed is a new breakaway deed, the requirement of a plan would be useful for anyone wishing to know the extent of land that the advance notice protects.

[5]The 2004 Rules may be found at http://www.legislation.gov.uk/ssi/2004/318/contents/made

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?

If not, please explain why:

Surely such a breakaway deed will induce a first registration in the Land Register in any event, so that an adequate plan will be required anyway? And if the deed in question is e.g. a standard security, before the requirment for such deed to go into the Land Register, it is good conveyancing practice for a suitable plan to be produced to identify the extent of the property being secured.

Yes ☒ No ☐

4.04. Section 56(1)(d)(iii) states that for advance notices over part of a registered title, the part must be described so as to enable the Keeper to delineate on the cadastral map the boundaries of the part. In this case, advance notices for transfers of part, standard securities over part, and deeds of servitude would all be shown on the cadastral map (but would not form cadastral units as these do not reflect registered rights).

4.05. Section 62(1) provides that after the protected period has elapsed, the Keeper must remove the notice from the application record and ensure that it has been entered into the archive record. In accordance with section 62(2), the Rules may prescribe a period of time after the protected deed has been registered when the Keeper must remove the advance notice delineation from the cadastral map. It is proposed that the period of time prescribed in the Rules is the "protected period" as defined in section 58(1).

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

Yes ☐ No ☒

If not, please explain why:

It may be that the extent of the area covered by the advance notice is nonetheless needed for some other purpose, or that another advance notice is registered, so that while it should be clear whether or not an advance notice is still applicable, it may also be useful to be able to see information about areas over which an advance notice has been previously registered or where there are competing advance notices whether there is any distinction etc. This may not be too problematic if there is ready access to this infomation in the Archive Record, but how accessible that Record will be is not known.

The advance notice regime is new to both the profession and the Registers. We suggest that until we have both had time to experience how this is going to work in practice, that too much presciption of procedure in advance should be resisted, and that practicalities can be kept under review.

4.06. Unilateral deeds do not have the protection of an advance notice since the Act states that there must be both a granter and a grantee in the intended deed. Section 64 allows for Part 4 to be modified to permit an advance notice to be used for any kind of deed so specified. This power has been provided with a view to allowing advance notices to apply to local authority Charging Orders. Consideration could also be given to other deeds of this nature when drafting an order under this section.

Question 49: Would you see a benefit in any other unilateral deed being included in an Order under section 64?

Yes ☐ No ☐

If so, what deeds do you feel would be appropriate for inclusion?

Part 5 -Inaccuracies in the Register

Inaccuracies in the Register

5.01. Section 65 provides a statutory definition of "inaccuracy". A title sheet, or the cadastral map, is inaccurate in so far as it misstates or wrongly depicts respectively what the position is in law or in fact, omits anything required, by or under an enactment, to be included in it, or includes anything the inclusion of which is not expressly or impliedly permitted by or under an enactment.

Shifting Boundaries

5.02. Natural water features often form the boundaries of properties. As a naturally occurring feature, such boundaries, whether fresh or salt water, do not necessarily remain fixed for all time. Natural water features are liable to movement over time, so that where the feature forms the boundary of a property, the boundary is liable to movement too. For example, a boundary might be the middle line (*medium filum*) of a given river, but the riverbanks may in fact be gradually moving, with the eastern bank being eroded, and the western bank increasing by deposits of silt, in which vegetation establishes itself. This increase is known as alluvion and is classified as a form of accession. If a boundary feature moves by alluvion the legal boundary moves with it. In this scenario, the general law of property says that the boundary remains the *medium filum.*

5.03. Alluvion is not displaced by registration of title. Where the land register depicts a natural water boundary on the map, this is simply a snap shot in time, defining the boundary as at the date of registration. Indeed, in terms of section 73(2)(i), the Keeper does not warrant that alluvion has not had an effect on a boundary.

5.04. Where a title boundary is changed by alluvion, the effect in registration terms, is to make the cadastral map inaccurate, as it wrongly depicts what the position is in law or fact. However, upon request to the Keeper, such an inaccuracy may be corrected by rectification.

5.05. Section 66 permits registered proprietors of adjacent plots of land separated by a natural water feature to agree that their common boundary (or part of it) may be excluded from the effect of subsequent alluvial changes. The effect of a shifting boundary agreement is to fix the line of the title boundary. Joint registration of such an agreement will have real effect and be binding on current and future proprietors. Such agreements are only registrable in the land register.

5.06. In terms of registration, a consequence of a shifting boundary or a section 66 agreement is that the cadastral map and title sheet do not become inaccurate as a result of alluvion affecting the fixed boundary.

5.07. The Keeper's policy is that such agreements should be registered jointly against both registered titles. A shifting boundary/section 66 agreement cannot be disapplied or discharged; any subsequent change to the boundary would require formal conveyancing.

5.08. A note will be added to the title sheets of the affected plots of land to advise that a boundary agreement is in place and as such said boundary will fall within the Keeper's general warranty policy. The affected boundary will be annotated on the cadastral map.

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

Yes ☐ No ☐

If not, please explain why:

We have no strong views on the matter but since the effect of a section 66 agreement is to fix boundaries, perhaps it would be more appropriate to name it (if it must have a name) a Fixed Boundary Agreement? This might also emphasise to the parties involved, that once registered, as stated above, it cannot be disapplied except by further conveyancing, and it is difficult to imagine the type of formal conveyancing that would have the effect of recreating the general principle of alluvion, so all that would be possible would be agreeing to a different, but equally fixed, boundary.

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

Note: The boundary between the points lettered A - B in blue on the Cadastral Map has been agreed in terms of the [Shifting Boundary Agreement] between [xxxx] and [xxxx] registered [xxxx].

Yes ☐ No ☒

If not, please explain why:

Replace "agreed" with "fixed"

Part 6 - Caveats

6.01. Part 6 provides for a new statutory system of caveats. A caveat on the title sheet will effectively warn third parties of ongoing litigation, although it does not for most purposes affect the acceptance of applications for registration in relation to that title. Warrant to place a caveat will be granted by the Court and the form of the caveat will be subject to the Rules of Court. Unless renewed, recalled or discharged, the caveat will be effective for 12 months. The rights of parties transacting with a registered title subject to a caveat will be subject to the outcome of the litigation.

6.02. A caveat on a title sheet is essentially a notification of a title dispute. As a caveat is placed on a title sheet of a plot of land, it is proposed that in all cases a note highlighting the existence of a caveat, its terms and duration should be placed on the property section of the title sheet. This will allow anyone searching the land register readily to identify where a caveat exists on a title sheet.

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

Yes ☒ No ☐

If not, please explain why:

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Land Registration Act 2012

Part 7 Keepers Warranty

7.01. Part 7 changes the scheme of the state guarantee of title from the Keeper's indemnity to the Keeper's warranty. There are two strands to the Keeper's warranty: that at time of registration, the title sheet to which the application relates (a) is accurate in that it shows the acquisition, variation or discharge in favour of the applicant, and (b) is not inaccurate in that there is no encumbrance omitted from it that should be reflected in the title sheet. Warranty is given to the applicant as at the date of registration.

7.02. Default warranty is the highest level of warranty but warranty can also be extended (to default warranty for rights or pertinents statutorily excluded from default warranty by section 73(2)), or limited or excluded in relation to a title or any part of a title.

7.03. A fresh warranty decision will be made with each application relating to the title, but it will also be possible for the Keeper to vary warranty between registration events if, for example, evidence that was not available at the time of registration subsequently emerges. Any variation of warranty can only be to raise the level of warranty as it will not be possible in these circumstances for the Keeper to grant less extensive warranty than that given at the date of the last registration.

7.04. There is a potential for this further evidence to be submitted to the Keeper in a number of ways and it may not always be apparent what is expected by the Keeper unless such requests are presented in a standard way. The Keeper therefore proposes that requests to vary warranty between applications for registration are submitted on a specified form and will attract a specified fee per title sheet affected.

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

Yes ☒ No ☐

If not, please explain why:

7.05. When giving warranty, the Keeper is required to have regard to any relevant caveat. The Act does not compel the Keeper to limit warranty where there is a caveat on the title sheet. The Keeper will disclose the caveat on the title sheet and proposes to take no further action while the matter is before the court. Therefore, the existence of a caveat on the title sheet will have no effect on the warranty and the onus will be on an applicant to determine the potential consequences of the ongoing litigation.

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

Yes ☒ No ☐

If not, please explain why:

7.06. Under section 74, warranty can also be granted in relation to registrations where no physical application to register the plot of land is received namely, section 25 (the automatic registration of an underlying plot on the application of registration for a subordinate real right) and section 29 (Keeper induced registrations). Warranty for registrations under these sections is granted to the owner of the plot of land in question and, although there is no application for registration, the level of warranty available under section 74 is equivalent to the warranty available under section 73. The Keeper intends that warranty given as a result of a registration under section 25 or section 29 should have a note entered on the title sheet to confirm this for the benefit of those searching the register or transacting with the property.

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?

Yes ☐ No ☐

If not, please explain why:

We are not sure what purpose this would achieve.

7.07. Section 77 provides a basis for the payment of compensation for loss incurred as a result of a breach of the Keeper's warranty. Under section 79, interest now runs on a claim for compensation and will continue to run until such time as the compensation is paid. Regulations will set the rate of interest and it is proposed in initial Regulations to align this rate with the Bank of England Base Rate.

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Land Registration Act 2012

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

Yes ☐ No ☐

If not, please explain why:

7.08. It is also proposed that interest will be applied in identical terms to the process for payment of compensation in Parts 8 and 9.

Part 8 - Rectification to the Register

Rectification

8.01. Where the Keeper becomes aware of a manifest inaccuracy in a title sheet or in the cadastral map, she must rectify the inaccuracy if what is needed to do so is also manifest. Where the Keeper rectifies an inaccuracy, she is then under a duty to give notice of the rectification to any person who appears to be materially affected by it. Under section 80(5)(a), provision may be made in the Rules regarding the persons to be notified by the Keeper.

8.02. Since the particular circumstances surrounding any given rectification will vary from case to case, the persons who could be materially affected by a rectification will also vary. For example, any rectification could materially affect some or all of the following persons but not necessarily in all circumstances:

- proprietors of the registered titles in question;
- heritable creditors;
- neighbouring proprietors;
- benefited proprietors in terms of a servitude right; and,
- registered tenants.

8.03. Once provision is made in the Rules, the Keeper must notify those persons upon every rectification even where in certain circumstances it may not be appropriate. It is the Keeper's view that such provision is too prescriptive. In order to allow for the flexibility necessary in these cases, it is proposed that the Keeper relies on the discretion in section 80(4)(b). This would allow her to consider the individual circumstances of any given rectification in order to determine the persons appearing to be materially affected by it.

8.04. The Rules may also make provision about the method by which notice of rectification is given. Notifications have already been considered in Part 2 of this consultation.

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

Yes ☐ No ☐

If not, please explain why:

8.05. Section 81 that limits the Keeper's duty to rectify. Where it appears to the Keeper that a rectification would interrupt a period of positive prescription, either because the title sheet has been marked "provisional" under the prescriptive claimant provisions or in any other case, the Keeper may only rectify if all parties consent or where the fact of the inaccuracy has been judicially determined. The Act does not provide a test to establish who should consent to a rectification aside from who is affected.

8.06. The Keeper considers that there should be no prescriptive list of who should consent to rectification, as the parties who should consent to rectification will vary depending on the facts and circumstances of the case. However, the relevant parties could include: the proprietors, heritable creditors, benefited proprietors in a servitude, neighbouring proprietors and registered tenants. In order to consider that the consent given is appropriate, the Keeper would require that those giving consent should have title and interest to be heard in court on the issue.

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?

Yes ☐ No ☐

If not, please explain why:

8.07. The Keeper is under a duty to rectify when she becomes aware of a manifest inaccuracy. Section

65(1) provides a definition of "inaccuracy" for the purposes of the Act, which states that a title sheet is inaccurate if it misstates the position in law or in fact, if it omits anything required by an enactment, or if it includes anything not permitted by enactment.

8.08. Where, for instance, the Keeper fails to reflect accurately the deed registered, that would be a misstatement of the position capable of being rectified as an inaccuracy. However, minor typographical errors that do not constitute a misstatement of the position in law or in fact, are not inaccuracies.

8.09. Section 50 of the Title Conditions (Scotland) Act 2003 (the 2003 Act) makes provision for the preservation of certain implied rights of enforcement or "neighbour burdens". Any benefited property for which no notice of preservation of those burdens is registered before 28 November 2014 will cease to be a benefited property. Any counterpart burdens appearing in the title sheet cease to be enforceable and will become inaccuracies in the land register.

8.10. Although the Keeper will be aware that such a class of inaccuracies exists, section 80(1) places a duty on the Keeper to rectify where she becomes aware of a manifest inaccuracy in a title sheet. Once the Keeper is made aware of an inaccuracy in the particular title sheet she will proceed to rectify.

8.11. Section 80(2) also provides that the Keeper can only rectify if what is needed to do so is manifest. Due to the nature of neighbour burdens, it may not be evident from inspection of the title sheet whether a particular burden is one where an implied right exists. Investigation into the prior conveyancing pertaining to that property and of the larger property will be required. There is also the possibility that the burden could have been saved by other provisions of the 2003 Act.

8.12. Therefore, even where a title sheet has been identified as containing a potential inaccuracy of this nature, it may not be manifest from an inspection of the title sheet what is required to rectify it. The Keeper would require further information from the person requesting rectification in this regard.

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8.13. In light of the above the Keeper will consider rectifying a title sheet to remove a burden in terms of section 50 of the 2003 Act where she is made aware of the inaccuracy in a particular title sheet. The Keeper would expect to receive a notification of perceived inaccuracy detailing a manifest inaccuracy and the manner of rectification sought

Question 59: Do you agree the Keeper should only consider 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?

Yes ☒ No ☐

If not, please explain why:

On balance we agree. It is preferable we think, for the Keeper to engage in a dialogue concerning a particular burden before removing it from the title sheet, rather than making a decision in isolation, which may, for obvious reasons, fail, or be unable to take into account other relevant facts which are not known to the Keeper. Despite the fact that the 2012 Act repeals section 51 of the Title Conditions (Scotland) Act 2003, it is to be hoped that the Keeper will, when requested to do so in an application for registration, remove burdens of this type that are brought to her attention in the course of the application.

8.14. Section 84 provides a basis for the payment of compensation for loss sustained by the person in consequence of the rectified inaccuracy as well as reimbursement of legal expenses incurred by the person requesting the rectification. A standard assignation will be required and interest will be applied in identical terms to the process for payment of compensation in Parts 7 and 9.

Part 9- Rights of Persons Acquiring etc. in Good Faith

9.01. This Part of the Act provides for an exception to the rule that if there is an inaccuracy in the land register it is to be rectified. Realignment of rights allows for certain circumstances where the register is not altered in the face of an inaccuracy and property rights are changed instead. The only recourse for a person losing their right to land in this situation is to apply for compensation.

9.02. Subject to certain conditions, a third party registered as proprietor, acting in good faith, acquires ownership of land through the process of realignment if the property has been peaceably possessed without challenge for at least one year. Certain conditions need to be met before realignment is deemed to have happened.

9.03. Where realignment may or may not have occurred, it is often the case that complex title disputes lie at the heart of the matter. It is the Keeper's view that, other than in exceptional cases where matters are beyond doubt, judicial determination will be required to establish whether realignment has occurred and the register can be rectified. In cases where rectification of an inaccuracy in the register would interrupt a period of possession[6] that,

if uninterrupted, would affect a real right, the Keeper's powers to rectify the register are limited by section 81.

[6]See Prescription and Limitation (Scotland) Act 1973, sections 1(1) and 2(1)

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?

Yes ☐ No ☐

If not, please explain why:

9.04. If a person were to suffer a loss as a result of realignment, he or she could apply for compensation under sections 94 and 95. Section 94 allows for the payment of compensation in situations where rectification is no longer capable by virtue of realignment having occurred, with the original owner deprived of a right or the proprietor of a property burdened by a servitude as a consequence. A standard assignation will be required and interest will be applied in identical terms to the process for payment of compensation in Parts 7 and 8.

Part 10 - Electronic Documents, Electronic Conveyancing and Electronic Registration

10.01. The purpose of this Part is to provide for legally-valid electronic documents and the registration of electronic documents in the registers under the management and control of the Keeper. A consultation on the proposed draft regulations was published by the Keeper on 1 July 2013 and can be viewed on the RoS and Scottish Government websites[7]. The Keeper is not consulting on Part 10 in this consultation. Any future regulations to be made by the Scottish Ministers on electronic registration will be subject to a separate consultation.

[7]The consultation may be found at http://www.ros.gov.uk/consultation/edocs_scotland_regulations_consultation_2013.html or http://ww.scotland.gov.uk/Publications/2013/07/6800

Part 11 - Miscellaneous and General

Extracts and Certified Copies

11.01. Land and Charge Certificates will no longer be issued upon completion of registration. However, under section 104, it will be possible to request an extract of a title sheet or any part of it, any part of the cadastral map, or a document or any part of it from the archive record. It will also be possible to request a certified copy of an application or advance notice on the application record or any other document in that record.

11.02. An extract or certified copy is to be accepted for all purposes as sufficient evidence of the contents of the original, and any matter relating to the original that appears on the extract or copy. This means that extracts and certified copies will have the evidential status required for court purposes. This is more extensive than at present where it is only possible to obtain an official office copy of a deed if it is referred to in the title sheet.

11.03. Section 104(7) states that the Keeper may issue an extract or certified copy as an electronic document; that is to say a document that is created in electronic form rather than on paper. Therefore, if requested, the Keeper will issue the extract electronically, for example by email. However, until such time as the courts can receive documents electronically the Keeper will not use a digital signature to authenticate extracts issued electronically.

Extracts of Cadastral Map

11.04. The cadastral map is a map showing the totality of registered geospatial data and it is made up of cadastral units, each of which represents a registered plot of land. If requested, the Keeper is required to provide an extract of any part of the cadastral map and this could be taken to mean one or more cadastral units. The smallest part of the cadastral map that can be extracted is a cadastral unit, and an extract of part of the cadastral map should contain all of the geospatial data within and relating to the cadastral unit or units shown.

11.05. A part of the cadastral map may contain more than one cadastral unit, and there may be certain information relating to a particular cadastral unit that extends in, over or between the other units. Therefore, if an extract of more than one cadastral unit were issued, certain information could be obscured from view by overlapping references relating to other units.

11.06. This is a particular issue in terms of section 106(1), which provides that a person is entitled to be compensated by the Keeper in respect of loss suffered as a consequence of the issue of an extract that is not a true extract. If the extract issued was of more than one cadastral unit and certain information was blocked or obscured by overlapping references, the Keeper could be liable to compensate a person for any loss suffered due to reliance on that extract.

11.07. Given the inherent constraints in how information from the cadastral map can be displayed from multiple layers in an IT system in a paper extract, it is intended that, certainly initially, it will only be possible to request an extract under section 104(1)(b) of one cadastral unit at a time.

11.08. As stated in Part 1, the Keeper proposes to treat certain data specific to individual flatted properties and registered leases as supplementary data that does not require to be shown on the cadastral map. This data is supplementary to the individual title sheets involved; therefore, whilst it will not be shown on the cadastral map it will be included within an extract of that title sheet. Consequently, in order to obtain an extract of such data the request should be made for an extract of the title sheet including supplementary data plan, or the relevant part of the title sheet, and not of the cadastral map.

11.09. Additionally, due to the mapping styles used to register titles under the 1979 Act it will not be possible for certain data to be migrated onto the new cadastral mapping system. This includes supplementary plans, enlarged plans or inset plans used to represent rights, burdens and areas of exclusive and shared ownership. In order to view such data, it will be necessary to look behind the cadastral map until such time as the titles in question are converted under the transitional provisions set out in schedule 4.

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

We consider that the ability to look at more than one cadastral unit at a time on the same plan could be extremely useful in a number of situations. In title investigations generally and when examining title where burdens may arise under a common scheme and surrounding titles need to be investigated. It could also be useful in cases where intimations to neighbouring propriertors are required and there will be many other instances where having access to this wider "neighbourhood" view could be of considerable use. For these sorts of uses in title investigations, it may not be necessary, at least not initially, to require that evidential status was guaranteed, although follow up information that is may be requested, to enable the information gleaned from the map to be relied on for certification purposes.

Information and Access

11.10. Under section 107, the Scottish Ministers may by order make further provision as regards information to be made available by the Keeper and the manner in which it is to be made available, and access to any register under the management and control of the Keeper. This includes extracts and certified copies discussed above.

11.11. The land register will comprise four parts: namely, the title sheet record, the cadastral map, the archive record, and the application record. Part 1 makes provision regarding the make up and content of the component parts of the register, and section 104 sets out that extracts and certified copies from the register are available upon request.

11.12. The archive record will be made up of deeds and other documents that may contain signatures and other sensitive personal information. Given the fraudulent activity experienced by other land registries which (briefly) offered an online service, the Keeper does not intend to provide online access to the archive record at this time. Instead, any person wishing to conduct a search of the archive record and request extracts from it will be permitted to do so via the appropriate channels within the RoS Customer Service Centres.

11.13. It is proposed that access to any of the Keeper's registers is provided for in an order made under section 107. The order will set out that access shall continue by way of the Customer Service Centres either by letter, email or in person.

11.14. It should be noted that both the Registers Direct and Reports services will continue after the designated day. However, they will be administered as commercial services under section 108, and as such they do not constitute information governed by section 107.

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?

Yes ☐ No ☐

If not, please explain why:

It would be useful if the Registers would consider a service that made online access to documents available but which, where appropriate, or if necessary on all occasions, redacted signatures and other sensitive information.

Fees

11.15. Under section 110, the Scottish Ministers may, by order, provide for the fees payable in relation to registering, recording or entering in any register under the management and control of the Keeper, as well as access to and information from such a register.

11.16. Fees have not been addressed in this consultation. It is intended that a separate consultation in respect of all fees charged by the Keeper, including those in respect of new products, such as advance notices and caveats, will be published later this year.

Duties of certain persons and Offence relating to applications for registration

11.17. The duty of care provisions at section 111 places a duty on anyone applying for registration or granting a deed intended to be registered to take reasonable care to ensure that the Keeper does not inadvertently make the register inaccurate. The offence provisions at section 112 make it an offence for anyone applying for registration to fail to disclose material information or make a false or misleading statement to the Keeper. Sections 111 and 112 along with section 121 provide a statutory defence for the Keeper against careless errors and wilful misinformation provided as part of an application for registration. The purpose of the duty of care on applicants and solicitors or other legal advisers in section 111 is to ensure that the Keeper does not inadvertently make the register inaccurate through reliance on documentation and evidence produced to her as part of an application for registration.

11.18. Both the duty of care and the offence are personal liabilities and, as such, a solicitor signing an application form on behalf of a client will, from the designated day, have to use his or her own name and signature rather than the name of the firm. The name and designation of the person signing will also have to be given and it is expected that a solicitor will continue to use the firm's address.

The Rules and Forms

11.19. The 1979 Act requires that registration may only take place upon receipt of an application. Rule 9 of the 2006 Rules prescribes that an application for registration shall be on the following forms:

- Form 1 where the application is for first registration;
- Form 2 where the application is for a dealing (other than a transfer of part of a registered interest); or
- Form 3 where the application is for registration of a transfer of part of a registered interest.

11.20. In addition to the application forms, the 2006 Rules provide for 11 other forms to be used in relation to the register:

- Form 4- Inventory of Writs;
- Form 5 - Application for the noting of overriding interest or for entry of other information in terms of section 6(1)(g);
- Form 6- Land Certificate;
- Form 7- Charge Certificate;
- Form 9 -Application for rectification of the register;
- Form 10 -Application for report prior to registration;
- Form 11 -Application for continuation of report prior to registration;
- Form 12 -Application for report over registered subjects;
- Form 13 -Application for continuation of report over registered subjects;
- Form 14- Application for report to ascertain whether or not subjects have been registered; and
- Form 15- Application for office copy.

11.21. The 2006 Rules were made under the powers in section 27 of the 1979 Act and will be repealed on the designated day.

11.22. Section 115 includes a new rule-making power and section 115(1)(c) provides Scottish Ministers with the power to prescribe forms to be used in relation to the land register.

11.23. The Keeper has taken this opportunity to review the forms currently prescribed in the 2006 Rules to establish what forms should be provided for in the Rules.

Redundant Forms

11.24. Under the terms of the Act, the requirement for Land and Charge Certificates is dispensed with. In addition, the Act does not provide for the noting of overriding interests in the land register. In light of these changes, it will not be necessary for the Rules to prescribe an equivalent of the current Forms 5, 6 and 7.

Report Forms

11.25. The 2006 Rules, including the Report forms, will fall on the designated day. From the designated day, the Keeper intends to provide pre-application reports on a commercial basis under the powers in section 108.

Rectification Form

11.26. Rule 17(1) of the 2006 Rules prescribes that an application to the Keeper for rectification of the register shall be on a Form 9. The process of rectification of the register has changed quite significantly between the 1979 Act and the Act. Under the terms of section 80(1) and (2), where the Keeper becomes aware of a manifest inaccuracy in a title sheet or the cadastral map, the Keeper must rectify the inaccuracy if what is needed to do so is manifest.

11.27. Having reviewed our rectification process, the Keeper's view is that although a rectification form should not be mandatory, there is benefit in prescribing a form for rectification. A form will allow persons to make a clear expression of the nature of the perceived inaccuracy to the Keeper, and to provide details of the affected titles and the evidence that has been supplied to establish that the inaccuracy is manifest.

11.28. The use of the form will be optional and the Keeper will accept notification of alleged inaccuracies in other formats. Anyone informing the Keeper of a potential inaccuracy in a title sheet or the cadastral map, will require to provide the Keeper with sufficient evidence to establish that the inaccuracy is manifest and what is needed to be done to rectify the inaccuracy is manifest.

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?

Yes ☒ No ☐

If not, please explain why:

ros.gov.uk

Land Registration Act 2012

Registration Forms

11.29. On reviewing the current application forms, the Keeper has established that there are few differences between Forms 1, 2 and 3. The main difference is two additional questions on Form 1 (questions 1 and 2). An internal report carried out by the Keeper found that one of the principal reasons for the rejection of applications is that the wrong form was submitted.

11.30. Therefore, to simplify the application process and reduce the number of rejections on the designated day, the Keeper proposes to introduce a single application form. The Rules will provide that only the questions that are relevant to the application being made require to be answered.

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

Yes ☒ No ☐

If not, please explain why:

Provided the form is simplified, easy to follow and clear to understand. Guidance on which questions are to be answered in particular circumstances must be provided. It is essential that applications are not rejected due to innocent errors in the application forms because it is unclear what to do or the questions are ambiguous.

Extracts

11.31. The 2006 Rules provide for a Form 15 to request an office copy of a title sheet. The use of the form is not mandatory but is a useful guide for customers to establish what information is required by the Keeper to issue an office copy. Under the Act, office copies are replaced by extracts of the title sheet. Section 104 makes provision for the issuing of extracts of the title sheet or the cadastral map.

11.32. The Keeper proposes to include in the Rules a form that may be used by customers to apply for an extract of a title sheet or the cadastral map. The Rules will make it clear that the use of the form will be optional.

ros.gov.uk

Land Registration Act 2012

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?

Yes ☒ No ☐

If not, please explain why:

If such a form were to be made readliy available digitally, so that it could be filled in and submitted with ease, and, if possible capable of being saved to a firm's document management system or online filing system, this would make it more attractive to use. The format should be simple and easy to complete.

The Act as a whole

Question 66: Please give additional comments about any aspect of implementation of the Act and related matters here (if you have any further additional comments then please email consultations@ros.gov.uk):

In respect of paragraph 11.18 of this consultation document on the requirement for a solicitor to sign as an individual, we suggest that the Registers give careful consideration to the potential effect of this proposal on practices within firms of solicitors, which could raise new risk management and practice issues. Although practices may vary from firm to firm, it is usual, especially since the signing of the form followed by submission raises the requirement for registration dues to be paid that invariably it is the role of partners or possibly senior associates to sign the registration forms. However it is equally as likely that the person signing will not be the solicitor responsible for the transaction.

It is quite common for example, for assistants,or paralegals to just get the nearest partner to sign the form before it goes out the door. That partner may have nothing to do with the transaction in question. If it is the person signing the form who assumes the liability under sections 111 and 112 regardless, then this will definitely change practice, as this current approach is likely to cease and the individual involved must be expected to sign. However this could mean that more junior solicitors are expected to sign the forms where they are the acting solicitor, which clearly opens up greater risk issues, and potential PI consequences. If partners continue to sign, then with transactions at a junior level, this could induce an unnecessary level of supervision, and additional risk management steps, for a partner to feel able to sign the form and assume liability, if that is correct.

There does not appear to be any requirement in the 2012 Act for the person who "acts as a solicitor or other legal adviser" to be the signer of the form. The liability under section 111 and 112 arises as a consequence of being the solicitor who acts as solicitor to the applicant, which in the context of the duty and the offence will mean in relation to the transaction to which the application relates, not the mere act of signing the form. If htat were true then it would mean that if the person acting as solicitor in the transaction is on holiday or becomes ill when the application needs to be submitted, it could not be done without their signature.

If the acutal person who signs the application form is not, in fact,the person "acting as solicitor or adviser to the applicant", it must surely be the correct legal interpretation of the Act that these sections would not apply to them. We suggest therefore that there is no statutory basis for this proposal and that it could prove to be unworkable in practice, and should be abandoned.

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Land Registration Act 2012

Annex A

List of Consultation questions

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?

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

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?

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?

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?

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?

Question 7: Do you agree that the date of entry should no longer be included in the title sheet? Question 8: Do you agree with the proposed approach for the removal of extinct overriding interests no onger required to be entered?

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?

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

Question 12: Do you agree that the seabed should be designated as a single operational area? Question 13: Do you agree that the description of a seabed plot should comprise a verbal description, a escription by reference to longitude and latitude coordinates and a plan?

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

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?

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?

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?

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?

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?

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?

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

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?

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?

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

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?

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?

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

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

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

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?

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?

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?

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?

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?

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?

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?

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?

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)?

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?

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?

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?

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

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?

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

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

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?

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

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?

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

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

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

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

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

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?

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

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

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?

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?

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?

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

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?

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?

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

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?

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

The Scottish Government Consultation Process

Consultation is an essential aspect of the way in which the Scottish Government works. The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors and no two exercises are likely to be the same.

Typically, the Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented.

Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government website enabling a wider audience to access the paper and submit their responses.

Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government Library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, Telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g. analysis of response reports) can be accessed at: Scottish Government consultations (http://www.scotland.gov.uk/consultations).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision-making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may: indicate the need for policy development or review; inform the development of a particular policy; help decisions to be made between alternative policy proposals; and be used to finalise legislation before it is implemented.

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Annex C

ros.gov.uk

Respondant 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: Ann Stewart Organisation Name: Shepherd and Wedderburn

Postal Address: 1 Exchange Crescent, Conference Square, Edinburgh EH3 8UL

Phone I Email 0131-473-5380 | ann.stewart@shepwedd.co.uk

1. Are your 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 ☐

List of Consultees

1. Accountant in Bankruptcy
2. Association of British Credit Unions
3. British Banking Association
4. Building Societies Association
5. Capability Scotland
6. Church of Scotland
7. Citizens Advice Scotland
8. Commission for Racial Equality
9. Committee of Scottish Clearing Banks
10. COSLA
11. Council of Mortgage Lenders
12. Disability Rights Commission
13. Equal Opportunities Commission
14. Free Church of Scotland
15. Faculty of Advocates
16. HM Land Registry (England and Wales)
17. HM Revenue & Customs
18. Homes for Scotland
19. In-house Lawyers Group
20. Land Registry Northern Ireland
21. Land Registry Republic of Ireland
22. Law Society of Scotland
23. Legal Software Suppliers' Association
24. National Records of Scotland

25. Ordnance Survey
26. Office of the Public Guardian (Scotland)
27. Queen's and Lord Treasurer's Remembrancer
28. Registrar of Companies for Scotland
29. Roman Catholic Church
30. Royal Institution of Chartered Surveyors
31. Royal National Institute for the Blind
32. Scottish Consumer Council
33. Scottish Courts Service
34. Scottish Law Commission
35. All Scottish local authorities
36. Scottish Episcopal Church
37. Scottish Information Commissioner
38. Scottish Law Agents' Society
39. All Scottish local law faculties (39)
40. All Scottish MEPs
41. Scottish Paralegal Association
42. Scottish Parliament Economy, Enterprise and Tourism Committee
43. Scottish Property Federation
44. All Scottish University Law Schools
45. Society of Advocates in Aberdeen
46. Society for Computers and the Law
47. Society for Local Authority Chief Executives
48. Society of Local Authority Lawyers and Administrators

49. Society of Scottish Searchers
50. Society of Solicitors in the Supreme Courts
51. Society of Writers to Her Majesty's Signet
52. Solitaire (an association of sole practitioner solicitors)
53. Transport Scotland
54. Scottish Arbitration Centre
55. Better Regulation Team, Scottish Government

Individuals

56. Professor George Gretton
57. Professor Kenneth Reid
58. Professor Kenneth Ross
59. Professor Robert Rennie
60. Professor Roderick Paisley
61. Professor Stuart Brymer