

# Response ID ANON-CEQC-5N5F-T

Submitted to **Digital Transformation: Next Steps**

Submitted on **2017-02-17 14:09:04**

## Part 1 - New digital services in the Keeper's registers

### 1 Do you agree that transition to a digital first service should be the next step?

Yes

#### Comments:

There is no question that this transition is inevitable. That said one must be wary of change for changes sake. This can , through poorly thought through and rushed implementation, lead to error, confusion and a lack of trust in a new system. This can be demonstrated by the failure of the ARTL system ( on that subject it is always interesting to see the Scottish Government and their agencies re-writing history by suggesting in the Consultation Paper that ARTL was never intended to be anything other than a "stepping stone" – is this an example of post truth ? ).

In addition, the 2012 Act with its political agenda of total Land Registration at all costs (the political agenda need not be addressed in this consultation however it would be very interesting to know why there seems to be such a rush and such preposterous timescales put on this entirely unnecessary exercise which can only have cost and accuracy implications ) has in itself brought about changes which have led to a lack of confidence in the workings of the Registers of Scotland caused in part by the widely documented increase in rejections of applications – and fines - and considerable costs being incurred by the public being forced to register their property should they wish a straightforward re - mortgage or other secured loan.

The approach should be considered and as straight forward as is possible and the Registers and the profession should have the appropriate support in terms of training to ensure the changes are implemented efficiently .

In addition can it be confirmed that any regulatory issues with regard to the distribution and execution of standard securities following upon the implementation of the Mortgage Credit Directive in March of last year have been fully addressed and investigated when it comes to digital execution of securities under mandate?

Has the Financial Conduct Authority been consulted in relation to these proposed changes. There appears to be no reference to the FCA in the consultation.

### 2 Do you agree with the proposed timescale of 1 April 2018 for prescribing that advance notices over part be fully digital?

Yes

#### Comments:

2. The proposed timescale for the changes to advance notices seems reasonable – provided of course the Registers are able to advise, train and implement the changes in the timescale.

### 3 Do you agree with a notice period of six months?

Yes

#### Comments:

3. Making the system compulsory is essential for it to be effectively implemented – if there is an option to not use a new system, many will choose that route of least resistance. 6 months would seem an appropriate timescale.

### 4 Do you agree the initial focus for digital registration, following launch of the digital discharge service, should be provision of channels aimed at standard securities and dispositions?

Yes

#### Comments:

Can you confirm that the grantor of the Disposition or Security will have to provide a signed mandate to their solicitor to execute the digital deed?

This will be in an (presumably) approved form and will have the grantors "wet" signature. If a wet signature is needed for the mandate, why should the actual document not be signed?

Would this not be more in line with the long held legal principle of an individual subscribing a formal document having actually read and understood same?

One would assume the disposition/security should be sent with the mandate to the grantor to see/explain what they are signing. The grantor will not however "see" the digital document that is submitted as it is created by ( it appears from Annex B) the population of various fields on a digital platform. In these circumstances would it not be simpler to register the "wet signature" document. Perhaps it could be scanned and sent as an annexation with the solicitor's confirmation that it is formally executed and they hold the document – as they would a mandate? Would this not be in line with the "tell me don't show me" principle?

In addition and as mentioned above have the regulatory implications of MCD been fully addressed? Has the Financial Conduct Authority been consulted?

On the subject to discharges of standard securities, has any consideration been given to the lenders actually affecting the discharge once the loan is repaid?

Where a Solicitor is acting for the borrower and in some cases, the lender, there is a communication trail that, through practice, ensures in the most part that the registration of the discharge is actually affected. Lenders may not under this system complete the registration of the discharge which will lead to the Land Register

not showing an accurate picture of the current status of an individual's title - in particular extant securities. This in turn will lead to a delay in completion of transactions where additional confirmation is required from a lender confirming a loan is repaid. Practitioners will point out that in some cases it can be difficult to obtain a redemption figure from a lender, let alone obtain confirmation that a loan has in some distant past date been redeemed. This concern was raised at a recent Conveyancing seminar.

Will it be possible for lenders to continue to ask their solicitors to deal with discharges of security - presumably by mandate / power of attorney?

In addition how will deeds of disburdenment of a Security (retaining the borrower's personal obligation under a secured loan) or partial discharges will be dealt with.

In the anticipated circumstances one would assume as the lender is simply discharging a security on the flick of a button then the Registers will no longer be able to justify a fee of £60 - if any fee at all - for this exercise . Please confirm. If the Registers are to continue to charge the £60 fee please provide a justification.

In addition will the digitisation of dispositions lead to a reduction on the registration fees paid on same? A quick comparison with England where a more digital system is in operation shows that our fees are massively out of line. it appears for a straight forward transfer of registered land in England the maximum fee is -£450. In Scotland the maximum fee ( using ARTL) is £7000.

Will these fees be reduced appropriately or is this simply another example of higher taxation on business and individuals in Scotland.

If the fees are not to be changed , as above, please provide justification.

In addition to the above Registers Direct does not currently provide a 24/7 service. This will have to change if this system is to work.

## **5 What deed types do you consider we should prioritise for new services subsequent to securities and dispositions?**

### **Comments:**

No comment

## **6 Do you consider that for the limited purpose of dual recording, it should be permissible to record an electronic deed in the sasine register or should be permissible to record a paper copy of the digital deed?**

### **Comments:**

No comment

## **7 Do you agree that ten working days from the date of digital submission is an appropriate period to allow the prior deeds to be submitted?**

Yes

### **Comments:**

10 days seems reasonable for submission of the documents however will there be scope for a re-introduction of the requisition system which worked very well before the 2012 changes. The changes have led to increased rejections and fines.

## **8 Do you have a view on alternative ways you would like to present supporting documents accompanying a digital application?**

No

### **Comments:**

## **Part 2 - Digital application form and submission process**

## **9 Do you agree with the main changes that we propose to make to the application form?**

Yes

### **Comments:**

Broadly speaking yes but we will need to see the form before commenting further.

All standard securities for various banks/finance houses and others are different.

How are these to be digital documents?

Will the banks submit same for registration on the system?

Will there be any approval or other procedure involved in this ?

If so when will this exercise be initiated?

We require to advise our lender clients on the substantive detail of this procedure at the earliest possible opportunity.

## **10 Are there any other changes you suggest we should make with a view to simplifying it and making it easier to follow?**

No

### **Comments:**

**11 Do you agree that instead of prescribing the content of the application form in the Land Register Rules, the keeper should publish the land registration application form on an administrative basis so that it can be amended from time to time, following consultation and due notice, without the need for changes to be made to the rules?**

Yes

**Comments:**

Yes. This always worked well in the past where changes to procedure in the land register were initiated in a similar manner without fuss. Obviously changes must be clearly publicised.

**12 Do you agree that this approach should be adopted for both applications submitted on paper and applications prepared through a digital service provided by the keeper?**

Yes

**Comments:**

**About You**

**What is your name?**

**Name:**

Allan Mckendrick

**What is your email address?**

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**Are you responding as an individual or an organisation?**

Organisation

**What is your organisation?**

**Organisation:**

Wilson Mckendrick Solicitors Limited

**The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:**

Publish response with name

**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 Scottish Government to contact you again in relation to this consultation exercise?**

Yes

**Evaluation**

**Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)**

**Matrix 1 - How satisfied were you with this consultation?:**

Slightly dissatisfied

**Please enter comments here.:**

**Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:**

Neither satisfied nor dissatisfied

**Please enter comments here.:**