



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

Post Consultation Report

March 2014

Introduction

1. Registers of Scotland would like to record its gratitude to all of the respondents who gave their time freely, and applied their knowledge so expertly, in making responses to the consultation. Thank you for your valuable contributions on topics across the whole breadth of the consultation paper.
2. The primary purpose of the Land Registration etc. (Scotland) Act 2012 (the Act) is to provide a new legislative base for the Land Register and reform and restate the law on the registration of rights to land. The Act repeals much of the 1979 Act and the Land Registration (Scotland) Rules 2006¹ (the 2006 Rules) and puts in place a new scheme of land registration.
3. In preparation for the implementation of the Act, the Keeper of the Registers of Scotland (the Keeper) reviewed the existing policy and practice of land registration. A public consultation to inform that review ran for 12 weeks from 16 September to 9 December 2013.
4. The purpose of the consultation was two-fold: (1) to inform stakeholders of changes required to implement the Act and the proposed content of the new Land Register Rules (the Rules) to be made under the powers contained in the Act; and (2) to seek views on the policies to be adopted by the Keeper.

The Consultation Exercise Consultation Methods

5. The Keeper set up a stakeholder working group of 20 solicitor firms and the Law Society of Scotland to gather views on different policy areas. The feedback from this group was used to inform the policies that were consulted upon.
6. The consultation paper was emailed to 149 organisations and individuals (a full list has been included as Annex A). To encourage further responses, the consultation was highlighted in electronic RoS customer newsletters for September, October and November and through the RoS eZine and eNewsletter. The RoS' customer newsletter is distributed to almost 18,000 contacts in our customer database. Articles highlighting the consultation were also included in the October and November editions of the Journal of the Law Society of Scotland, which has a monthly circulation of 12,388. From November to December, a digital banner advert promoting the consultation was placed on the Scottish Legal News daily eNewsletter which is distributed to 9,000 solicitor contacts. In addition, 5,000 postcards promoting the consultation were sent out with registration-related mail despatched by RoS.

Responses to Consultation Exercise

7. The consultation exercise generated 54 unique responses. Responses were received from key stakeholders, including the Council of Mortgage Lenders, Scottish local authorities, the Law Society of Scotland and the Faculty of Advocates. Responses were also received from some of the major landowners in Scotland, for example Scottish Water,

¹The 2006 Rules may be found at <http://www.legislation.gov.uk/ssi/2006/485/contents/made>

the Crown Estate Commissioners, Network Rail and the Church of Scotland. Finally, responses were received from 10 firms of solicitors and 12 private individuals, including three professors with particular interest in the field of property law.

Summary of responses

8. The consultation document provided a background to the Act and the purpose of the consultation. The document was split into 11 parts that followed the parts and sections of the Act. The consultation asked 66 separate questions that covered each policy area dealt with by the different parts of the Act. Of the questions posed, 65 asked for “yes” or “no” answers and for supporting comments. There was a further question that asked respondents to give additional comments about any aspect of the implementation of the Act.

9. The table below provides a summary of where there was support and opposition to policy questions:

Questions where all respondents that answered the question agreed with the policy.	3
Questions where there was a significant majority in favour of the policy.	42
Questions where a majority supported the policy but there was a significant opposition.	15
Questions where there was a majority against the proposed policy.	5

10. The Keeper is encouraged by the high level of support from respondents for the proposed policies across many of the policy areas discussed in the consultation document.

11. Where a majority of respondents indicated they were opposed to the proposed policy or where there was significant opposition, the Keeper undertook a review of the relevant policy. Discussion of the responses to individual questions and the outcomes of the consequent policy review undertaken after the consultation closed are covered in the following section of this report. In addition, Annex C sets out the questions asked and gives a breakdown of responses to each. The table also sets out whether or not the policy proposed will be adopted. In cases where there was opposition or disagreement with a proposed policy, the document sets out the Keeper’s decision on review in each case. The structure of this section follows the order of the parts and sections of the Act. Any reference in the report to a section, part or schedule, without further identification, refers to the Act. Likewise, references to the designated day refer to the day on which the main provisions in the Act take effect (in accordance with section 122 of the Act).

Part 1 - Land Register

1.1. Part 1 of the Act provides for the continuation of the Land Register and outlines the duties on the Keeper in respect of making up, maintaining and protecting the Register. The primary legislation sets out the constituent parts of the Land Register and the principal information to be contained in each part. The consultation was designed to elicit the views of stakeholders on how that information should be reflected and what secondary information may be appropriate for inclusion.

Title sheets and title sheet record

1.2. Subject to some exceptions, each registered plot of land must have a unique title sheet and the title sheet record is the totality of all such title sheets. The structure of the title sheet is set out in section 5. The consultation asked ten questions in relation to title sheets.

Question 1 – Lease title sheets

1.3. The Keeper's current practice is to create a separate title sheet for the tenant's interest in a lease. The Act gives the Keeper discretion to continue this practice and the consultation proposed that the Keeper would continue to so do. An overwhelming majority of respondents agreed with this proposal. The Keeper will continue with current practice.

Question 2 – Real Right field

1.4. Section 6(1)(a)(ii) requires the property section of title sheets to reflect “the nature of the proprietor's right in the plot of land”. Title sheets currently include a field titled “interest”. The consultation proposed that this field be renamed “Real Right” more accurately to reflect the property law position. The majority of respondents agreed with this policy. The Keeper will implement this policy from the designated day.

Question 3 – Title sheet cross reference

1.5. Section 6(1)(f) requires that where there is more than one title sheet for a plot of land the Keeper must cross-refer on each title sheet to the title numbers of the other title sheets. The consultation proposed that the appropriate method of achieving this would be to provide a schedule in the property section and the majority of respondents agreed with this proposal. The Keeper will therefore implement this policy from the designated day.

Question 4 – Title sheet updated to date

1.6. The consultation proposed to maintain the current policy of including in the property section of title sheets the date to which the title sheet was last updated. All respondents that answered this question agreed with this proposal. Accordingly, the Keeper will ask the Scottish Ministers to include a provision to this effect in the Rules.

Question 5 - Map reference and hectarage

1.7. Title sheets currently disclose the extent of the plot of land, where this is greater than two hectares, and the Ordnance Survey reference information relating to the area of map and 'map tile' on which the subjects are located. The consultation proposed that title sheets should no longer disclose this information.

1.8. The majority of respondents were of the view that the Keeper should continue to include this information in title sheets.

The Church of Scotland noted:

"It is useful to have the map reference and size of a plot specified rather than just seeing it on a map".

Burness Paull noted:

"Yes the map reference can be deleted but the size of a registered plot can be helpful e.g. farm estates."

Change to proposed policy

1.9. In light of the responses, the Keeper has reviewed this policy and concluded that title sheets will continue to disclose the area measurements. After further discussion with stakeholders, including the Law Society of Scotland, the Keeper has agreed that the area measurement will be shown in title sheets for subjects extending to 0.5 hectares or more in measurement on the Ordnance Map.

National Grid references

1.10. Many respondents were also in favour of the inclusion of the national grid reference. For instance:

Scottish Assessors Association stated:

"This has the potential to act against ongoing work to cross-reference all information relating to property using Gazetteers and Unique Property Reference Numbers."

However, Ordnance Survey was supportive of the proposal to remove the reference and provided the following comment;

"This makes sense [to remove the National Grid reference] as the OS MasterMap Topography Layer which underpins the Land Register is a single continuous database layer of spatial information and is not presented in a map tile form."

1.11. In determining future policy on this matter, the Keeper noted that although, at the moment, we do not implement the schema referred to by Scottish Assessors Association, our data is related to the national standard for uniquely identifying and defining land. The removal of the map reference will not therefore affect any future integration of our data into a National Land and Property Gazetteer. Furthermore, any Unique Property

Reference Numbers and Building Land and Property Units will not require these attributes to link to our data.

1.12. The cadastral map will, in the first instance, use the Ordnance Survey MasterMap as the base map. As the National Grid is the map reference system used on all Ordnance Survey maps to identify the position of a feature, it also underpins MasterMap. However, as discussed, MasterMap is not presented in a map tile format, so the Keeper will proceed with the policy of removing map reference information from the title sheet.

Question 6 - Consideration

1.13. Title sheets currently disclose in the proprietorship section the consideration as narrated in the last deed registered that resulted in a change in proprietor. The consultation proposed to continue with this policy and to provide for it in subordinate legislation. All respondents that answered this question agreed with this proposal. The Keeper will therefore ask the Scottish Ministers for this information to be requested in the application form prescribed in the Rules and entered in the title sheet by virtue of section 10(2)(e) as information that the Keeper considers appropriate.

Question 7 – Date of entry

1.14. There is no legal requirement under the Act for the title sheet to disclose the date of entry of the current proprietor. The consultation outlined the view that the date of entry should not be included in the title sheet from the designated day.

1.15. Respondents disagreed with the proposal to omit the date of entry from the title sheet.

The Law Society noted that:

“The Committee is of the view that the inclusion of the date of entry of the current proprietor in the proprietorship section in the title sheet is helpful. For example it is helpful to ascertain prescriptive periods in insolvency situations.”

Murray & Muir, Chartered Surveyors, noted that:

“The date of registration can be much later than the date of entry. Valuers depend upon information relevant to the date of valuation. Removing the date of entry will potentially remove the date that the bargain was concluded. This will lead to uncertainty about all transaction details as there will no longer be any certainty about the date upon which any bargain was struck.”

Scottish Assessors Association noted that:

“This is useful to Assessors and Electoral Registration Officers in that various rights, such as appeals, have a time limit based on, amongst other things, the date of occupation. The concern is that this data item would cease to be available in data extracts currently supplied by Registers of Scotland.”

1.16. The Keeper also received responses identifying respondents' use of the date of entry in title sheets for assessing liability in relation to council tax and apportionment of costs of common repairs.

Change to proposed policy

1.17. In light of the responses to the consultation, the title sheet will continue to reflect the date of entry.

Question 8 – Rectification of overriding interests

1.18. An overriding interest is a term used in the Land Registration (Scotland) Act 1979 (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 noting of overriding interests is not provided for in the Act and continued disclosure of them on a title sheet renders it inaccurate. The Keeper proposed: (a) to remove them from existing title sheets in a structured manner; and (b) to accept requests for rectification to remove them from a title sheet not yet updated under the structured approach.

1.19. There was strong support favouring the proposed approach from key stakeholders including both the Law Society and the Faculty of Advocates. The Keeper will therefore adopt the proposed policy.

Question 9 – Servitude reference

1.20. 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. 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

1.21. This is not a statutory requirement under the Act or 1979 Act and the consultation sought views on whether stakeholders found it useful information. All except two respondents who answered the question, had found identification of the servitude deed in the property section of a title sheet to be useful. The comments from Shepherd and Wedderburn, Solicitors, summed up the broader range of comments:

"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."

Change of proposed policy

1.22. Given the strength of support for the practice, the Keeper will continue to refer to the deed constituting the servitude in the Property Section of the title sheet.

Question 10 –Occupancy rights

1.23. The Matrimonial Homes (Family Protection) (Scotland) Act 1981 and the Civil Partnership Act 2004 provide protection to non-entitled spouses/civil partners relating to occupancy rights in their family home. The Keeper's practice has been to enter a statement in the proprietorship section of the title sheet narrating the position on occupancy rights relating to previous proprietors, as required by rule 5(j) of the 2006 Rules.

1.24. The Act is silent on occupancy rights and in the consultation the Keeper proposed that from the designated day the practice of adding a note in relation to occupancy rights would cease.

1.25. The majority of respondents who answered the question, including the Law Society, agreed with the proposal; however, some respondents disagreed with the proposed policy.

Shepherd and Wedderburn, solicitors, noted:

“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. ...”.

1.26. A number of the comments against the policy change appear to be based on an incorrect understanding of the Keeper's current policy. In particular, there was a view that RoS archives the Matrimonial Homes Act/Civil Partnership Act documentary evidence (such as an affidavit or consent). That is not the case as the statement entered by the Keeper is based on a certification provided on the application form. There is no requirement to submit the documentary evidence.

1.27. The proposal to discontinue showing the current statements on occupancy rights will be adopted as policy on the designated day.

The Cadastral map

1.28. The Act introduces the cadastral map as part of the Land Register. Sections 11, 12 and 13 provide details on the content of the cadastral map and that each registered plot of land is represented on the map as a single cadastral unit; an exception to this being flatted properties. The Act clarified that the Land Register, and therefore the cadastral map, extends to include the seabed of the territorial sea adjacent to Scotland. The consultation set out the Keeper's proposed policies in relation to defining ownership, registered rights and encumbrances - 'mapping' - on the cadastral map.

1.29. Questions 11 to 20 of the consultation paper relate specifically to the cadastral map, and respondents overwhelmingly agreed with the Keeper's policy proposals on all but one question.² That question, number 19, related to shared and sharing plots.

² See Annex C which narrates the particulars for each question. Questions 11, 12, 13, 14, 15, 16, 17, 18 and 20 received significant agreement from respondents.

1.30. The Act introduces the concept of shared and sharing plot title sheets. Section 17 outlines the criteria applicable to enable a plot of land owned in common to be designated a shared plot and for those properties with a share in the common area to be designated sharing plots. The title sheets must disclose the respective share the proprietor has in the shared plot. The Keeper proposed that where historical conveyancing did not quantify the share and common law rules applied, that the deed to be registered should specify the share.

1.31. The majority of respondents who answered this question agreed with the Keeper's proposal. However, a significant number of respondents, including the Law Society, did not.

Burness Paull noted:

"We like the idea of the certainty that this would give but the reality is that the situation is not always clear and cannot always be warranted by the Keeper."

The Law Society noted:

"The Committee is of the view that in many instances it would not be a simple exercise to narrate the share because it may prove impossible to work out the share without extensive research which would be expensive for clients. The Committee anticipates particular problems in this regard in first registration applications."

McVey & Murrice, solicitors, said:

"Note: this will require education of the profession. Particularly in Edinburgh where titles historically are poor in respect of older tenements, there is a lack of confidence in relying upon either the common law or the Tenements (Scotland) Act."

Next steps

1.32. The Keeper has not yet reached a decision in this area and intends to meet again with the Law Society and other members of the conveyancing profession to discuss the issues arising in respect of quantifying shares created in historical conveyancing deeds. The Keeper's objective is to explore ways to ensure that what is needed to meet the requirements of the Act is practical, and not unreasonably onerous for the profession or costly for the applicant. The Keeper therefore continues to work towards a pragmatic outcome for RoS and stakeholders.

Part 2 – Registration

2.1. Part 2 of the Act contains provisions relating to applications for registration, the registration process and notifications. The registration criteria are set out in the primary legislation and this part of the consultation was designed to seek stakeholders' view on the secondary rules and processes required to facilitate the registration process.

Question 21 - Registrable Deeds

2.2. An application for registration must be in respect of a "registrable deed" and 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. The Keeper proposed producing a list of registrable deeds to aid those submitting applications for registration. Support from respondents was high and the Keeper will prepare and publish such a list in advance of the Act's commencement.

2.3. A number of respondents raised issues relating to section 49 of the Act. The following comment from Pinsent Masons outlines respondents' concerns;

"We are of the view that s.49 of the Land Registration (Scotland) Act 2012 should be altered before it comes into force to allow for registration of all deeds that can be registered in terms of the common law (and not just deeds capable of registration by virtue of a statutory provision). As currently drafted, s.49 will prevent the registration of a number of useful and presently competent deeds including ranking agreements for servitudes and minutes of extension of lease (extending the geographic area of leases) about which the Keeper has recently given this guidance [on operation under the 1979 Act]: "While there is no conclusive authority supporting the validity of such deeds, the Keeper's policy is that provided both landlord and tenant are parties to the variation then the presumption is that such deeds are acceptable."

2.4. The Keeper considered this issue and met with some of the respondents who had commented on this topic to discuss the matter further. Discussions noted that whilst innovative and novel contracts may well be in use off register, it is very often possible to effect the registration stage by recourse to a traditional deed without impinging on the underlying contract or scheme. Cases of this type will be unaffected by the new legislation. The discussions also led to an agreed view that the Keeper should include in guidance on registrable deeds, advice for when applicants are unclear as to whether a deed is registrable. This will help to deal with the small number of cases where the authority for registration is found in local or private Acts that may not always be known to the Keeper.

2.5. Additionally, in some cases, the Act amends earlier enactments to ensure that commonly registered deeds continue to be registrable. In the case of leasehold deeds, for example, the 2012 Act amends the Registration of Leases (Scotland) Act 1857 to ensure that deeds that vary leases (including amendment to the area of a lease) can be registered. Moreover, section 49 does not require that an enactment **expressly** authorises registration. This provides flexibility in relation to deeds affecting subordinate real rights (such as servitudes) where the subordinate real right itself (or the deed creating it) is clearly registrable. Finally, the 2012 Act leaves in place section 29(2) of the Land Registration (Scotland) Act 1979, which provides, with some exceptions, that deeds which

are capable of being recorded in the General Register of Sasines can be registered in the Land Register. There is significant provision on the statute book relating to different types of deeds being recorded in Sasines.

2.6. The Keeper's preferred approach is to work with applicants to find, where possible, practical solutions to ensure that the legal right that the applicant wishes to acquire can be constituted in a deed that meets the requirement for a registrable deed. The Keeper is continuing to explore the issues raised in relation to section 49 to establish if this requirement will pose difficulties for individuals in relation to acquiring a legal right.

Question 22 – Supporting Documents

2.7. Applications for registration must contain sufficient documents and information to enable the Keeper to make up the title sheet. Failure to do so will result in rejection of the application. The consultation discussed the new requirements in relation to supporting documents and the Keeper offered to develop and issue suitable guidance for applicants. The Keeper noted the very considerable support for the proposal and it will be adopted.

Question 23 – Development Plan Approval

2.8. The Keeper proposed that reference to a plot on an approved development plan would be a sufficient description in relation to the conditions of registration. Respondents, including key stakeholders who already use this service, offered considerable support for this proposal. The Keeper will implement this policy from the designated day.

Questions 24, 25 and 26 – Acknowledgements

2.9. The Act does not prescribe that the Keeper need acknowledge that an application for registration has been entered in the application record, although this is current practice. The Keeper asked stakeholders in the consultation whether this practice should continue after the designated day and whether the acknowledgement should be by email only. The consultation also proposed that the acknowledgement should contain the same information as is currently disclosed, including the provisional title number where appropriate, as at the moment, near universally, the provisional title number will become the title number when the registration process is completed. There was strong support for the proposals. The Keeper will implement this policy from the designated day and will ask the Scottish Ministers for provision to be made in the Rules.

Requisitions

2.10. The application for registration and the deed being registered must be acceptable for registration on the date the application is received. This means that if the deed is defective or if information that is required has not been provided, the Keeper must reject the application rather than make a requisition. Consequently, the circumstances in which it will be appropriate to make a requisition after the designated day will be limited.

Question 27 – Requisition policy

2.11. The consultation proposed that in the limited circumstances where a requisition is permissible, the policy should apply equally to all application types, whether a first registration or an application over an existing title sheet. An overwhelming majority of respondents agreed with this proposal and the Keeper will implement this policy from the designated day.

Question 28 – Requisition provisions

2.12. The Act allows the Keeper to make provision in the Rules for the circumstances in which requisitions will be permissible. Since the Keeper proposed to apply the requisition policy equally to all application types, it was suggested that no further provision be made in the Rules.

2.13. There was some divergence of opinion among respondents with a number preferring a more prescribed approach although overall twice as many respondents, including the Law Society of Scotland, preferred the proposed option. However, some comments highlighted the need for clear guidance on the rejection criteria rather than requisitions.

Shepherd and Wedderburn commented that:

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

2.14. The Keeper will produce clear rejection criteria in advance of the designated day as well as detailed guidance on the one-shot rule. Such measures should address the concerns put forward by respondents and on that basis the Keeper will adopt the proposal not to make further provision in the Rules regarding requisitions.

Question 29 – Requisition period

2.15. The Keeper proposed a reduction in the period in which applicants must comply with a requisition, from the current 60 days to 30 days. Since requisitions will only be permissible in limited circumstances and given that most requisitions will in the future relate to pre-existing documents, 30 days was considered appropriate.

2.16. A slight majority of respondents who answered this question were against the reduction of the requisition period from 60 days to 30 days.

The Law Society commented that:

“The Committee is of the view that the period of standover should be 42 days to reflect business practices.”

Change of proposed policy

2.17. It is noted that some respondents emphasised in response to other questions that RoS will need to process applications timeously on the basis that, if an application is going to be rejected, they need to know early. That factor is important in the consideration of the relevant period for standover. However, RoS acknowledge that they may be ahead of their customers' expectations in proposing 30 days and will accept the Law Society suggestion of 42 days, on the basis that this period fits the business model of their member firms (who submit almost all applications for registration).

Notifications

2.18. The Keeper is bound to notify both applicants and granters (or their respective agents) upon the acceptance, rejection or withdrawal of an application for registration. Notification is to be by such means as the Keeper considers appropriate.

Question 30 – Electronic notifications

2.19. Against the background of the Scottish Government's Digital Public Services Strategy and the proposal for acknowledgements discussed above, the consultation proposed that all notifications of acceptance, rejection or withdrawal be made by electronic means only. Some respondents were firmly of the view that paper notification should remain as an option.

Professor Gretton noted:

"I do not agree. Where electronic communication is possible, it should be used. I agree to that extent. But there is no legal requirement to have an email address. If all applications were done on behalf of clients by law firms, electronic-only notification would be acceptable. But just as the law does not say "thou shalt have an email address", it does not say "thou shalt deal with RoS solely through a law firm." Paper notification imposes extra costs on RoS, no doubt. The solution is, I would suggest, is that the registration fee should be higher for those who require to be notified by letter."

The Faculty of Advocates noted that:

"The Faculty agreed that use of electronic communication was to be encouraged, but it was not satisfied that notification solely by email conformed to the Keeper's obligation under section 40(1) and (2) that she "must notify" even when allowing for the qualification of reasonable practicability found in section 40(3)."

2.20. Other respondents noted that an email address may not be available in every case and also the dangers that such emails may be caught by security filters which may regard them as "spam."

2.21. The Law Society of Scotland caveated their positive response in the following terms:

"Yes in principle subject to there being IT coverage across the whole of Scotland and also to the entitlement to request a paper copy if so desired."

2.22. The Keeper has considered the issue at length. It was noted that the overall direction in the provision of public services is that digital methods should be considered first and promoted where appropriate.

2.23. The environment in which the proposed electronic means are to be used is relevant: in nearly all cases, the notification will be made to parties' agents. The Keeper is not aware of any conveyancing firms who do not use IT office systems including email. The modern conveyancer can only access the Council of Mortgage Lenders handbook, a prerequisite for acting in a mortgage transaction, online. The Law Society of Scotland is also shortly to issue its practising certificate on an electronic smart card. Concerns that notifications may be caught by "spam" filters may be dealt with by adding the Keeper's notification email address to firms' lists of "safe" email senders.

2.24. The Keeper intends that the electronic notification, in addition to providing a link to a view of the updated title sheet, will also be printable or capable of electronic storage as is any other email. This would allow copies of the notification to be sent to clients by their agents if the clients either do not have an email address or they have chosen to withhold it from the application form.

2.25. Access to the Land Register, as with the other public registers held by the Keeper, is available to individual citizens. Applications for registration in the Land Register may be made personally by a party to a deed, usually by the grantee, although in practice these remain unusual: in 2012-13 there were 253,408 applications to the Land Register, of which only 201 were not made through solicitors' firms. The Keeper's review recognised the importance of individuals' right and noted that, as with agents, the submitting party would receive the deed(s) back together with a receipt for the fees paid. If no email address is provided by the applicant, registration would proceed but there would be no electronic notification. However, the applicant would receive the deed(s) back within normal postal service times at the end of the registration process.

2.26. Overall, the proposal offers speed and accuracy of communication and a considerable cost saving when compared to a paper-based system, particularly since the Keeper must notify the applicant and the granter for each deed submitted. The concerns raised in respondents' comments appear manageable for agents, the Keeper and individuals. After review therefore, the Keeper considers that her proposed policy is appropriate and she will adopt it from the designated day.

Question 31 – Provision of email addresses

2.27. Since both applicant and granter (or their respective agents) must be notified on acceptance, rejection or withdrawal of an application the consultation asked whether the applicant, who will be submitting the application for registration, should provide an email address for the granters (or their agent) on the application form for notification purposes.

2.28. Respondents were generally in favour of the proposal. However, some respondents suggested that only the email address of the granters' agent should be required given concerns around privacy, confidentiality and/or data protection where the email of the granter is provided.

2.29. While the Keeper is required to notify the "granter of the deed", the Scottish Law Commission in their Report on Land Registration (No. 222, paragraph 12.117) confirm

that in practice notification will be made to a solicitor, as agent, as a matter of general law. Therefore, in most applications for registration, the client would not have to provide an email address since notification could be made to their agent's email address only.

2.30. It is important to emphasise that a failure to provide email addresses will not lead to rejection of the application for registration; only that a notification under the Act will not be made. On that basis, the Keeper considered that concerns raised in respondents' comments appear manageable for agents, the Keeper and individuals, and has decided to adopt her proposed policy to ask for an email address for notification purposes on the application from the designated day.

Question 32 – Other notifications

2.31. The Act also places a duty on the Keeper to notify certain persons who are not a party to the current application, registration, or rectification but whose title is affected. In many cases, up to date information and email addresses will not be available and the consultation asked whether the Keeper's policy should be to notify such persons by post to their last known address. Respondents overwhelmingly agreed with the proposals and the Keeper will adopt this as policy from the designated day.

Question 33 – Automatic plot registration notifications

2.32. Where the ownership of a plot of land is automatically registered as a consequence of an application to register a long lease, assignation of unregistered lease or sublease, the Keeper must notify the owner of the plot and may notify any other person she considers appropriate. The consultation proposed that the Keeper would only notify the owner in those circumstances.

2.33. The majority of respondents agreed with the Keeper's proposal. However, the comments from those who disagreed mainly suggested that heritable creditors should also be informed. The flavour of comments is illustrated by those from Irene Turner:

"... Notification could usefully be restricted to those occupying the property and heritable creditors who may require detail as to the form of title in the event of repossession or the commencement of enforcement action."

2.34. The Keeper has considered the responses and comments. With regard to creditor's enforcement action leading to repossession, it is likely that pre-registration reports on title would be obtained as part of the process. Earlier intimation to heritable creditors may not therefore be essential as the state of the title would be established at the date relevant to their proposed action. Additionally, where the heritable security was granted some time ago, the creditor may have changed and notification based on historical information may prove meaningless in such situations.

2.35. In light of the above, the Keeper has decided to adopt the proposal as policy but will discuss this point further with the Law Society sub-group on automatic plot registration.

Prescriptive Claimants etc.

2.36. Sections 43 to 45 set out provisions in relation to prescriptive claimant applications. A prescriptive claimant is in effect a person that has submitted an application to register a disposition where the granter of a deed does not have title to grant it. The effect of registering such a disposition is to allow the law of prescription to operate to make the title valid. In order for such an application to be accepted by the Keeper, the Act set out certain criteria that must be met. The consultation asked some questions that would inform the procedure to be used by applicants and the Keeper so that these criteria could be met.

Question 34, 35 and 36 - Guidance

2.37. These questions asked whether respondents agreed that the Keeper's policy for evidence of possession in terms of section 43(3), the wording of affidavits and the requirements for evidence of notification in terms of section 45(4) should be provided for in guidance rather than in the Rules. A significant majority of respondents, including the Law Society, agreed with this approach. Therefore, in preparation for the designated day the Keeper will publish guidance in line with stakeholder expectations.

Questions 37 and 38 – Style and means of notification

2.38. The consultation asked whether respondents agreed that in order to meet an appropriate evidential standard, the notification by the prescriptive claimant required under section 43(4) should be by recorded delivery mail and that the style of notice and requirement for recorded delivery should be specified in the Rules. Although some respondents disagreed with these proposals, a significant majority of respondents agreed. In light of the benefit to the prescriptive claimant and the potential loss to the owner, the Keeper favours the view that the notification procedure be made as robust as is reasonably practical. The Keeper will therefore ask the Scottish Ministers to provide in Rules for a style of notice that must be sent by recorded delivery.

Question 39 and 40 – Notification by the Keeper

2.39. The Act provides that when a prescriptive claimant application is received, the Keeper must notify the proprietor, or a person who can take steps to make up title, or the Crown. The consultation proposed that the Keeper should only re-notify those persons that had already been notified under section 43(4) and the notification should be by mail to the same address (but not recorded delivery).

2.40. The majority of respondents, including the Law Society and the Faculty of Advocates, agreed with these proposals, but there were a number of respondents that answered no to these questions.

Scottish Water noted:

“The Keeper should notify all with interest”.

Brodies LLP stated:

"Provided that the Keeper is satisfied that proper notification has taken place and that, ..., where it is found that proper notification has not been carried out by the applicant, the application will be rejected."

2.41. The Keeper decided that she: (a) must be satisfied by the prescriptive claimant that notification to the correct party has already been carried out; and (b) will require the prescriptive claimant to have used recorded delivery (question 37 refers). If the Keeper is of the view that another person should have been notified, the application will fall to be rejected. As such, the Keeper does not consider that the further notification by her requires the use of recorded delivery and will therefore adopt the proposal as policy.

In addition, the Keeper will prepare and publish guidance for prescriptive claimants setting out a general approach on parties to be notified by prescriptive claimants.

Question 41 – Notification to multiple proprietors

2.42. The duty to notify under section 45(2) only applies in so far as the Keeper considers it reasonably practicable to do so. The policy suggested in the consultation was that, where there the numbers involved make individual notification prohibitive, the Keeper should explore alternatives, such as notification to a residents association.

2.43. Most respondents agreed with the proposed policy but some did suggest problems with this approach.

Brodies LLP noted:

"Yes, provided that the association or representative body is still active and in contact with the relevant proprietors."

Burness Paull, solicitors, noted:

"Our experience of Residential Associations is that the constitution of the Association may not allow such notification to be accepted."

2.44. The Keeper, after review, considers that she should adopt the proposed policy where it is appropriate. In light of the comments received, she will determine guidelines on when she would use this approach and when she will otherwise continue to notify individual proprietors. Guidelines will be published in advance of the designated day.

Question 42 and 43 – Period of notification by prescriptive claimant

2.45. The policy intention behind the notification provisions in section 43 is to encourage contact between persons wishing to acquire land and owners who no longer use it. The consultation proposed that the Rules should make provision that such notification should take place a minimum period of time before an application can be submitted and that this period of time should be 60 days.

2.46. Respondents, including the Queen's and Lord Treasurer's Remembrancer, the Council of Mortgage Lenders and Faculty of Advocates, overwhelmingly agreed with the

proposal and that 60 days is an appropriate period. The Keeper will therefore include policy to this effect in draft regulations to be considered by Scottish Ministers.

Part 3 - Competence and Effect of registration

3.1 Part 3 contained questions relating to the entry of decrees of reduction and orders for rectification on the Land Register.

Question 44– Decrees of reduction and orders for rectification.

3.2 The consultation asked if the Keeper should develop draft styles for decrees of reduction and orders of rectification and seek to have these included in the Rules of Court. All respondents agreed to these proposals.

Question 45 – Arbitral awards

3.3 All respondents agreed with the proposal that the Keeper should publish guidance on the registration criteria for arbitral awards.

Part 4 - Advance Notices

4.1 Part 4 set out a number of questions relating to the introduction of advance notices. An advance notice is intended to provide protection for the grantee of a deed during the time between taking delivery of the deed and registration.

Questions 46, 47 and 48 – Advance Notices

4.2. Respondents were asked whether the advance notice should be combined with a form, whether a plan should be annexed to an advance notice in the General Register of Sasines where the deed being protected is a breakaway deed, and whether the end of the protected period is an appropriate time to remove the delineation of an advance notice from the cadastral map.

4.3. Respondents agreed overwhelmingly with these proposals and the Keeper will adopt these policies for the designated day. A combined form and advanced notice for entering in the application record will be included in the draft Rules. A combined form and notice for recording in the General Register of Sasines will be inserted in the Sasine legislation.

Question 49 –Advance notices for unilateral deeds

4.4. The Act prescribes that an advance notice will protect a deed that has a granter and grantee. Advance notices are designed to provide protection for the grantee in a deed during the "gap" period between delivery of the deed to them by the granter (usually on payment of the price) and its entry onto the application record of the Land Register. The Act therefore makes no provision for unilateral deeds, with a granter but no grantee, to be protected by an advance notice.

4.5. Section 64 of the Act allows the Scottish Ministers to make an order specifying other deeds that could benefit from an advance notice. This power was provided with a

view to allowing advance notices to apply to local authority charging orders. Respondents were asked if they would see a benefit in any other unilateral deeds being included in an order under section 64.

4.6. Some 20 respondents, including the Law Society of Scotland and the Council of Mortgage Lenders, were in favour of other unilateral deeds benefiting from the protection of advance notices, although six respondents disagreed:

"My preliminary view is that advance notices should not be introduced for unilateral deeds, including charging orders."
George Gretton

"Deed of Conditions. This would assist developers, who otherwise would have to ensure that their Deed of Conditions was registered before an Advance Notice was granted for the Disposition to the first plot purchaser."
Pinsent Masons

Deeds of Conditions were also suggested by: the Law Society of Scotland, Burness Paull, Church of Scotland, HBJ Gately and Scottish Water.

"For example, in some cases it may be appropriate for a section 75 planning obligation to be included."
Council of Mortgage Lenders

"Notice of Title, General Vesting Declaration"
Brodies LLP

"Possibly. In principle the Faculty considered that any deed capable of creating or affecting real rights, which could be defeated by the intervening act of the holder of the principal real right might benefit from the advance notice system, but they are unable to suggest any further examples."
Faculty of Advocates

4.7. The Keeper, on review, noted that the deeds suggested for protection include those in the field of public law, such as planning and compulsory purchase. In these cases, she concluded that it would be inappropriate for the Keeper to seek to make alterations to such statutory schemes without these being considered holistically by the relevant civil law policy areas and local authority bodies.

4.8. In relation to other deeds such as Notices of Title, it was noted that the timing of these was within the control of the person or body who proposes to make up title. For deeds of conditions, there were clearer comments as to the difficulties being protected against; however, it is noted that it is within the grantor's control to mitigate against those difficulties through management of the timing of conveyancing transactions.

4.9. Overall, the Keeper concluded that the case for extension of advance notice protections to unilateral deeds was not persuasive in some cases, and not within the Keeper's remit in others.

4.10. The Keeper will therefore inform Scottish Government colleagues in appropriate policy areas of the views expressed. No order will be sought under section 64 at present.

Part 5 - Inaccuracies in the Register

5.1 Part 5 asked a number of questions relating to inaccuracies in the Land Register. A title sheet, or the cadastral map, is inaccurate in so far as it mis-states or wrongly depicts respectively what the position is in law or in fact, omits anything required to be included in it or includes anything which ought not to be included.

Question 50 and 51 – Shifting Water boundaries

5.2. Section 66 provides that proprietors of adjacent plots of land affected by alluvion can agree that the boundary is not affected. This prevents the Land Register from becoming inaccurate as a result of the operation of alluvion. The consultation proposed that the deed to fix the boundary should be termed a “shifting boundary agreement” and provided draft wording that would be added to the title sheet to indicate that such an agreement had been registered.

5.3. Some respondents suggested that calling a deed that fixed a boundary a Shifting Boundary agreement was counter-intuitive. However, most respondents who answered the question agreed that it was an appropriate name. The Keeper will therefore adopt the term for agreements made under section 66. There was strong support from respondents for the proposed terms of the note and the Keeper will use this in title sheets against which Shifting Boundary Agreements are registered.

Part 6 –Caveats

6.1. Part 6 concerned the new statutory system of caveats (in essence, an entry on the Land Register warning third parties of ongoing litigation).

Question 52 – Caveats

6.2. The Keeper considers that a caveat on a title should always appear in a particular part of the title sheet in order that proprietors, agents, searchers and other enquirers can be certain to find it. The Keeper's proposal that caveats be shown in the Property Section of a title sheet was overwhelmingly supported by respondents; the Keeper will therefore adopt the proposal as policy from the designated day.

Part 7 - The Keeper's Warranty

7.1. Part 7 of the Act details the new scheme of Keeper's warranty that replaces the Keeper's existing indemnity as a state guarantee of title. This part of the consultation was intended to gauge stakeholders' opinion on a few procedural aspects of warranty and compensation payable by the Keeper for a breach of warranty.

Question 53 - Variation of warranty

7.2. Where the Keeper has excluded or limited warranty in terms of section 75, it will be possible for the Keeper to increase warranty from that initially given outwith an application for registration if, for example, new evidence comes to light. Respondents were asked if they agreed that such requests to vary warranty should be submitted on a specified form and there was universal agreement with this proposal among respondents who answered this question. The Keeper will develop an application form for this purpose and publish it in advance of the designated day.

Question 54 - Warranty and caveats

7.3. The Keeper proposed not automatically to exclude warranty where a caveat had been entered on the title sheet, largely on the view that where parties transacted with a title sheet disclosing a caveat the grantees of the deed would do so at their own risk. The Law Society, Faculty of Advocates and the Council of Mortgage Lenders all supported the proposal. However, three of the 36 respondents answering this question disagreed with the proposal. Notwithstanding the overwhelming support for the policy, the comments by Professor Gretton highlighted a risk that had not been fully appreciated by the Keeper.

7.4. Professor Gretton addressed the position as follows:

"In the SLC draft Bill, s 41 said:

If at any time a caveat is placed on a title sheet, the Keeper's warranty in respect of an application—

(a) which refers to that title sheet, and

(b) is received at or after that time, is subject to the caveat for so long as the caveat remains in place.

This has been omitted in the 2012 Act. It has been replaced by a provision in s75(2) saying that in granting warranty, "the Keeper must have regard to any relevant caveat."

As I read the 2012 Act, the effect of s.75 is that the Keeper, in granting warranty, should modify that warranty to reflect the caveat. If s/he does not do so, the result would be that the warranty would be unmodified, with the result that the Keeper would be liable in circumstances where (as a matter of the policy underlying the legislation) s/he should not be liable.

So it seems to me that whenever there is a caveat the Keeper should modify warranty accordingly. (That would have been unnecessary had s 41 of the SLC Draft Bill been enacted.)"

Change to proposed policy

7.5. The Keeper's reconsideration of the policy agrees with the view that the presence of the caveat in the title sheet before a transaction may not protect the Keeper where full warranty was granted to the grantee in such a transaction.

7.6 We acknowledge that the approach proposed in the consultation may result in the Keeper and applicants having differing views on the effect of warranty in certain situations and may in fact lead to litigation on that issue. Therefore, to protect the compensation fund from claims from parties who transacted in the face of a caveat, and who therefore had full opportunity to establish the nature and potential effect of the court action on the title, the Keeper will not adopt the proposed policy.

7.7. In order to provide certainty, the Keeper will instead adopt a policy that warranty will usually be excluded for the effects of the litigation to which the caveat relates. The policy is, in effect, a continuation of the current policy under the 1979 Act.

Question 55 - Section 74 warranty

7.8. Under section 74 of the Act, warranty can be granted in relation to registrations where no physical application has been received, namely under section 25 (automatic registration of underlying plot on registration of subordinate real right) and section 29 (Keeper-induced registration). Respondents were asked if they agreed that there should be a statement on the title sheet to show that warranty was granted under section 74 and there was overwhelming agreement with this proposal. Accordingly, the Keeper will adopt the proposal as policy from the date of commencement of the Act.

Question 56 - Compensation interest rate

7.9. The Act provides a basis for the payment of compensation for loss incurred as a result of the Keeper's warranty. Interest is payable on any claim for compensation and the consultation asked if this interest rate should be aligned to the Bank of England Base Rate.

7.10. A comment was made suggesting that a political stance was being taken by the Keeper in advance of the referendum. That is not the case. Our proposals are consistent with other instruments made by Scottish Ministers and are in line with current practice for calculations of interest.

7.11. In general, respondents agreed overwhelmingly with the proposal and accordingly, the Keeper will ask Scottish Ministers to provide for this in subordinate legislation.

Part 8 - Rectification of the Register

8.1. This part concerns the duty on the Keeper to rectify the Land Register where it contains a manifest inaccuracy and where what is needed to do so is also manifest. This section of the consultation sought respondents' views on the Keeper's proposed policy in dealing with requests for rectification.

Question 57 - Notification of rectification

8.2. Where the Keeper rectifies an inaccuracy, she is under a duty to notify any person who appears to be materially affected by the rectification. In the consultation, respondents were asked if they agreed with the Keeper's proposal not to prescribe persons to be notified of a rectification in the Rules.

8.3. The consultation document pointed out that if the categories of parties to be notified of a rectification are set out in the Rules, the Keeper must notify those persons upon every rectification even in certain circumstances where that may not be appropriate. In the consultation, it was proposed that the Keeper would rely upon the discretion in section 80(4)(b) to consider the individual circumstances of any given rectification in order to determine the persons appearing to be materially affected by it. This approach was supported by 29 of the 38 respondents who answered this question.

The Law Society noted:

“Yes in principle but useful to have a framework of relevant persons and possibly include this in guidance.”

By contrast, respondent 14 stated:

“They must be prescribed, or it will be left to the Keeper's judgment which could vary from case to case.”

First Scottish Group said:

“In order to provide certainty and transparency we consider that certain categories of persons who would be affected should be prescribed in the Rules. This should provide enough flexibility without allowing no certainty at all.”

8.4. The Keeper's conclusion aligns with the view expressed by the Law Society. We will not seek to have persons specified in Rules. The Keeper will instead include guidance on the issue as part of her general policy on notifications. We undertake to develop the guidance in conjunction with the Law Society.

Question 58 - Parties consenting to rectification

8.5. Where it appears that a rectification would interrupt a period of positive prescription, the Keeper can only rectify if all parties consent or there has been a judicial determination on the fact of the inaccuracy. The consultation proposed that parties consenting to rectification should be capable of demonstrating that they would have title and interest to be heard in court on the issue and this was agreed with overwhelmingly by respondents. Accordingly, the Keeper will adopt the proposal as policy from the designated day.

Question 59 - Removal of neighbour burdens

8.6. As stated, the Act places a duty on the Keeper to rectify when she becomes aware of a manifest inaccuracy in the title sheet, but this can only be done if what is needed to be done is also manifest. Due to the nature of neighbour burdens under section 50 of the Title Conditions (Scotland) Act 2003, it may not be obvious if there are inaccuracies in the Land Register. The consultation therefore proposed that the Keeper should only consider removing such a burden where she is provided with details of a manifest inaccuracy and the manner of rectification sought. The vast majority of respondents agreed with this proposal and therefore the Keeper will adopt this policy from the designated day.

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

9.1. This part of the Act provides for an exception to the rule that an inaccuracy in the Land Register is to be rectified. Realignment of rights allows for certain circumstances where the Land Register is not amended in the face of an inaccuracy and property rights are altered instead.

Question 60 - Realignment of rights

9.2. The consultation asked respondents if they considered that where realignment may not have occurred, other than in cases where the matters are beyond doubt, the Keeper should only rectify where judicial determination has established the Land Register is inaccurate.

9.3. Most responses to this question agreed with the proposal. The wording of the question caused confusion among some respondents. The Keeper's intention was to demonstrate that realignment is usually a question of fact and for it to be in doubt will be highly unusual. The Keeper's view is that realignment will have occurred in relevant circumstances unless a party obtains a judicial determination to the contrary. Where judicial determination is obtained, the Land Register will be inaccurate and the Keeper will be able to rectify that inaccuracy.

Professor Gretton expressed matters eloquently:

"The basic rule in the 2012 Act is that where an entry in the LR is not justified by the deeds, the LR is inaccurate and ought to be rectified. But the Act specifies an exception, in certain types of case where the rule is that the LR is not to be rectified, but instead, the parties should have the rights (or lack thereof) that the LR says they have (or that they lack). This is realignment. It is the converse of rectification. Where there is realignment, the effect is that the entries in the LR are deemed accurate. Accordingly, where there is realignment, no question of rectification can arise."

9.4. The Act does not provide the Keeper with power to arbitrate in these cases. The Keeper will therefore adopt the policy that should doubt be cast upon the operation of realignment in any particular case, she will require a judicial determination to show that the Land Register is inaccurate and, potentially, to make manifest what action is required to make it accurate.

10. Part 10 – Electronic documents, electronic conveyancing and electronic registration

10.1. Part 10 of the consultation document provided information on the powers in the Act to facilitate the above. No questions were asked. The Land Registration etc. (Scotland) Act 2012 (Commencement Order No.2 and Transitional Provisions) Order 2014 was laid in Parliament on 21 February 2014. The Order commences Part 10 of the Act. This part of the Act includes sections 96, 97 and 98, which amend the Requirements of Writing (Scotland) Act 1995 (the 1995 Act) to allow for electronic documents and electronic signatures; section 99, which allows the Keeper to operate a system to enable automated registration in the Land Register; and section 100, which allows the Scottish Ministers to make regulations to enable electronic registration in any of the registers under the management and control of the Keeper.

Part 11 - Miscellaneous and General

11.1. The next questions in the consultation come from Part 11, namely regarding extracts, information and access, and application forms.

Extracts

11.2. Under the Act, if requested, the Keeper is required to provide an extract of any part of the cadastral map, which could be taken to mean one or more cadastral units.

Question 61 - Extracts of cadastral units

11.3. Currently, an office copy (which has evidential status) of a title sheet is only issued on a single title sheet basis. The Keeper proposed in the consultation, for technical IT reasons, that the Act's equivalent - an extract - will also only be available one cadastral unit at a time. A question in the consultation asked respondents to inform us of situations where an extract with evidential status showing more than one cadastral unit at a time would be needed.

11.4. A considerable number of respondents to this question suggested that there were situations where it would be helpful to have an extract of more than one cadastral unit at a time.

Shepherd and Wedderburn commented:

"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 proprietors are required and there will be many other instances where having access to this wider "neighbourhood" could be of considerable use. For these sorts of uses in title investigations, it may not be necessary, at least 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."

11.5. The Keeper has considered the information needs identified from respondents' comments and looked again at the reasons lying behind her decision to offer extracts of single cadastral units only. The Keeper concluded that current technical constraints are indeed such that paper extracts of more than one cadastral unit would be inaccurate in many instances. (A worked example is provided in Annex D to illustrate this more clearly.) The Keeper's proposed policy will therefore be adopted.

11.6. It is possible that electronic extracts of more than one cadastral unit will resolve this difficulty in future for those customers who have compatible geospatial information systems of their own. The Keeper will reconsider the position when the possibility of electronic extracts of the cadastral map becomes possible from her computer systems. The Keeper will also issue guidance on extracts in relation to sharing and shared plots.

11.7. The Keeper is mindful of the information needs of customers and has identified a potential solution to some of the issues set out by Shepherd and Wedderburn above. It may be possible to offer reports of cadastral unit extents only, which may be called an ownership layer, to inform title investigations for particular areas. These could be paper-based, although they could not be given evidential status for the reason already set out.

The Keeper's Commercial Services Directorate will explore with customers the utility of the proposed cadastral unit extent reports described above.

Information and Access

Question 62 - Access to the registers

11.8. It is proposed that an order under section 107 of the Act is made to continue to allow access to the Keeper's registers by way of the RoS Customer Service Centres and by letter, email or in person. The consultation asked respondents to confirm if they agreed with this position.

11.9. Respondents agreed overwhelmingly with the proposal that current arrangements for access to the Keeper's registers should continue. The Keeper will therefore discuss the content of an appropriate order with Scottish Ministers.

Forms

Question 63 - Inaccuracy form

11.10. The consultation proposed that a form advising the Keeper of a potential manifest inaccuracy should be made available and that the use of this form should be optional. The questions within the form would guide the user to provide the relevant information the Keeper would need to consider when it is suggested that the Land Register is inaccurate.

11.11. Respondents were asked if they agreed with this proposal and the vast majority confirmed their agreement. The Keeper will ensure that this form is made available.

Question 64 - Registration application form

11.12. The consultation paper proposed that a single form should replace the existing Forms 1, 2 and 3 for an application to register a deed in the Land Register and respondents were asked if they agreed with this approach. This proposal met with near universal approval from respondents. The Keeper will develop such a form.

Question 65 - Extract form

11.13. The Keeper proposed to make available a form that may be used by customers to apply for an extract of a title sheet, the cadastral map or a document in the archive record. The use of this form would be optional. Respondents were asked to confirm if they agreed with this policy and almost universally endorsed this proposal. The Keeper will develop such a form for use in requesting extracts from the Land Register.

Question 66 - The Act as a whole.

11.14. The consultation asked respondents for any additional comments about any aspect of implementation of the Act and related matters. Thirty-one of the total of 54 respondents made comments at this question and a number of key themes emerged from

these responses. One of these key themes related to questions arising from policy proposed within the consultation.

11.15. A number of correspondents raised concerns with the Keeper's approach set out at paragraph 11.18 of the consultation paper, that individual solicitors be required to sign the application form on behalf of a client using his or her own name, rather than that of their firms, from the designated day.

Shepherd and Wedderburn noted:

'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'.

Change of proposed policy

11.16. The Keeper's views on this topic continued to evolve during the consultation period through discussion with the Law Society and other stakeholders on the legal position and on practical considerations within firms of solicitors. The Keeper reviewed her proposed policy in light of responses, including comments, together with other stakeholder views received informally over the consultation period.

11.17. The Keeper has concluded that it will be a question of fact as to who acted "as a solicitor or other legal adviser" to the grantor or applicant in terms of section 111. It should be sufficient in most cases for the Keeper to raise issues of a breach of the duty of care with the firm or LLP. The question of fact may be established from the agents' client files within the firm. The Keeper will not adopt the proposed policy from designated day but will instead continue to accept applications for registration signed by the firm or LLP.

11.18. There were a number of comments querying the Keeper's intended approach towards the rectification process, particularly concerning the proposal that parties consenting to rectification should be capable of demonstrating that they would have title and interest in court.

First Scottish Group commented:

'The Keeper must not force people into court through inability to make decisions on rectification etc. This is retrograde. Decisions on "inaccuracy," "proprietor in possession" (Schedule 4) should be made by the Keeper. Assumptions as to registered proprietors being in possession should not be made without proper enquiry by the Keeper otherwise HR legislation could be breached'.

Brodies LLP and Pinsent Masons LLP both questioned how 'interest' should be demonstrated in relation to determining who is required to give consent to rectification under section 81, with Brodies commenting on whether this would be by reference to the Title Conditions (Scotland) Act 2003, noting:

'This test has been difficult to interpret as the Courts have given differing judgements on the level of interest to be shown. We would therefore urge the Keeper to be very clear about how interest is to be established'.

11.19. The Keeper considers that in many cases the position on title and interest will be clear. In more complex cases, the Keeper will expect the party seeking rectification to provide information on why they consider they have title and interest. The Keeper will monitor the operation of the rectification scheme to see whether the provision causes practical difficulty.

11.20. There were also several comments regarding the Keeper's proposed policy on prescriptive claimants. Scottish Water noted their concern that prescriptive claimants could obtain land owned by them as they cannot effectively police the thousands of pieces of land in their ownership all over Scotland. They commented further:

'Scottish Water would request that where a prescriptive claimant seeks to register title to land near reservoirs, water treatment works, waste water treatment works, etc, the Registers of Scotland automatically notify Scottish Water of the proposed registration so that Scottish Water may have an opportunity to comment on the application'.

11.21. The Keeper notes that should Scottish Water be the proprietor of the land, or any part of the land, subject to the prescriptive claimant application, the applicant is under a duty to notify them of the application under section 43(4). In relation to land upon which a reservoir or related works are shown on the Ordnance Map, the Keeper would review the notifications carried out by the prescriptive claimant for evidence that notifications appropriate for the land for which registration is sought, had been made.

11.22. Further disparate questions relating to policy included queries on advance notices, the use of co-ordinates and Keeper-induced registration. The Keeper will consider all the comments when formulating further policies and procedures for implementation of the Act.

11.23. The need for further guidance and communication from the Keeper was a further theme to emerge from comments. There were concerns that implementation of the Act could cause significant disruption.

McVey & Murrice commented that:

"From a practitioner's point of view, the important aspects of the Act are that the disruption to the conveyancing process, additional anxiety for the conveyancing public and additional cost to the conveyancing public are kept to the minimum. From my review of your implementation strategy, I fear that the implementation of the act will cause considerable disruption. As with all conveyancing changes, it takes time for the impact of the changes to disseminate amongst the whole profession."

11.24. There was acknowledgement among respondents that such concerns could be alleviated by appropriate guidance and further consultation from the Keeper. A number of respondents highlighted the need for this in order to allay concerns. The Law Society commented that:

“The Committee is of the view that as a number of practical/implementation issues arise from for example, certifications in application forms or the information disclosed on searches, early engagement with the profession on the form/wording/extent of applications and reports is imperative.”

Brodies LLP stated:

“We were encouraged to hear that these [pre-registration] services are being looked at in anticipation of implementation of the Act. Given the introduction of the one shot principle, we hope that the support services for the pre-registration stage are strengthened in numbers and expertise to deal with the increase in demand for pre-registration queries and checking services. We are pleased to note that the Keeper intends to issue guidance on the new rules and procedures and trust that guidance will also be issued to assist with the transitional period.”

11.25. A number of respondents felt that more specific guidance on particular topics was required and that the Keeper should issue this in advance of the designated day, such as; automatic plot registration, bijural inaccuracies in terms of the transitional provisions in Schedule 4, Crown notifications under the prescriptive claimant provisions, and the duty of care and offence.

11.26. It is the Keeper’s intention to publish technical guidance for practitioners on plans and legal issues. For this purpose, the Keeper has created an area³ of her website dedicated to the Act and implementation issues. It is intended that information be added to this specialist area as policy is agreed and processes designed. The first topics prepared, and published after discussion with the Law Society, are already available on the RoS website: General FAQs and FAQs on advance notices. The Keeper also intends to engage closely with stakeholders through a number of events in advance of the designated day. These events are currently in the planning stages with dates etc. being set. Details will be published in due course.

11.27. Several respondents expressed concern regarding the integrity of the Land Register post-designated day, with areas such as the removal of information from the title sheet and links in title highlighted:

Irene Turner commented as follows:

‘I disagree with the proposals which seek to limit the information contained in the title sheet relating to e.g. date of entry and occupancy rights⁴. This would force practitioners to place reliance on...other evidence, deeds and documentation which should be supplementary to the land certificate and would dilute the status of the land certificate as the primary document stating and recording the rights and obligations relating to land ownership on which the entire land registration system was formerly based.’

11.28. The post consultation review noted that the policy set out by the Scottish Law Commission specifically removes from the Land Register those rights that were considered inappropriate under the new basis of the register.

³ The area may be found at <http://www.ros.gov.uk/2012act/>

⁴ For discussion of the date of entry see question 7 above and on occupancy rights see question 10.

11.29. Other comments confirmed approval with the general principles of the Act with one respondent stating *'once settled in, the procedures should make life easier for practitioners and the Keeper's staff'* (name not publicly disclosed) and HBJ Gateley commented:

'In general, we are supportive of the aims of the Act and are happy to assist Registers in forming the rules and guidance'.

12. The Keeper is grateful for the breadth of consideration and all the comments made under this question and elsewhere in consultation responses.

List of invited 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. LandRegistryRepublic 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 (32)
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

Consultation respondents by sector

Annex B

Professional Organisations
Queen's and Lord Treasurer's Remembrancer
First Scottish Group
Murray & Muir Chartered Surveyors
The Law Society of Scotland
Council of Mortgage Lenders
Scottish Assessors Association
Faculty of Advocates
Ordnance Survey
Network Rail
Millar & Bryce
Church of Scotland
First Title Insurance plc
Scottish Water
Scottish Court Service
The Crown Estate Commissioners in Scotland
East Ayrshire Council
Solicitor Firms
Pinsent Masons LLP
Burness Paul LLP
Shepherd and Wedderburn
McVey & Murrice
Brodies LLP
HBJ Gateley
Russell & Aitken LLP
DWF Biggart Baillie
W & J S Gordon
Thorntons Law LLP
Individuals
Professor George Gretton
Professor Robert Rennie
Professor Stuart Brymer
George Hay
James Corbett
Kirsty Findlater
Irene Turner
Helen Cleeton
Nick Weech
Hugh Mackay
Francesco Zappa
Andy Wightman
5 public responses with name and address redacted
11 wholly confidential responses
Total - 54 responses

List of questions and Summary of responses

Question number	Question	Answers YES	Answers NO	No response	Comments only	Yes / total replies to question	Post consultation policy review: Outcome in relation to proposed policy
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?	35	3	14	2	35/38	Adopted
2	Do you agree with the proposed change of name and terminology for this entry?	38	2	14	0	38/40	Adopted
3	Do you agree that a schedule in the property section is the appropriate means to reflect the cross-referral to other title sheets?	37	3	13	1	37/40	Adopted
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?	41	0	12	1	41/41	Adopted

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?	16	23	14	1	16/39	Map reference: adopted. Size of plot: not adopted.
6	Do you agree that the Keeper should continue to disclose the consideration in the proprietorship section and provide for this in the Rules?	41	0	12	1	41/41	Adopted
7	Do you agree that the date of entry should no longer be included in the title sheet?	13	33	8	0	13/46	Not adopted
8	Do you agree with the proposed approach for the removal of extinct overriding interests no longer required to be entered?	29	8	16	1	29/37	Adopted
9	Has the reference in the property section to a deed constituting a servitude been of assistance to you?	Frequently 27 Infrequently 7	never 2	15	3	34/36	Not adopted
10	Do you agree that the land Register should not reflect information regarding occupancy rights?	23	18	13	0	23/41	Adopted

11	Do you agree that discontinuous areas of land that are relative to each other by ownership and purpose may be grouped as a single cadastral unit?	36	4	12	2	36/40	Adopted
12	Do you agree that the seabed should be designated as a single operational area?	35	1	15	3	35/39	Adopted
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?	37	2	14	1	37/39	Adopted
14	Do you consider that where such information is submitted to the Keeper that it should be included in the property section?	38	1	14	1	38/39	Adopted
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?	33	3	17	1	33/36	Adopted
16	Do you consider that including the plan of the individual flat as supplementary data to the title sheet is helpful?	39	2	11	2	39/41	Adopted

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?	33	3	16	2	33/36	Adopted
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?	34	4	13	3	34/38	Adopted
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?	25	15	13	1	25/40	Not adopted
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?	36	2	14	2	36/38	Adopted
21	Do you agree that a list of registrable deeds together with the enactment under which they are registrable will assist you in	33	3	16	2	33/36	Adopted

	completion of the application form?						
22	Do you agree with this approach for supporting documentation?	33	6	14	1	33/39	Adopted
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?	29	8	14	3	29/37	Adopted
24	Do you agree that the Keeper should issue an email to acknowledge when an application for registration is entered onto the application record?	34	4	16	0	34/38	Adopted
25	Do you agree that the provisional title number should be contained in the acknowledgement?	36	1	16	1	36/37	Adopted
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?	35	2	17	0	35/37	Adopted

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?	34	3	16	1	34/37	Adopted
28	Do you agree that nothing further on requisitions is required in the Rules?	22	11	19	2	22/33	Adopted
29	Do you agree that a period of standover of 30 days in relation to requisitions made under the Act is appropriate?	17	19	17	1	17/36	Not adopted
30	Do you agree that notification upon the acceptance, rejection or withdrawal of an application should be by electronic means only?	19	17	18	0	19/36	Adopted
31	Do you agree that the applicant should provide an email address for the granter or the granter's agent on the application form?	22	13	18	1	22/35	Adopted

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?	34	3	17	0	34/37	Adopted
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?	20	13	19	2	20/33	Adopted
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?	35	4	14	1	35/39	Adopted
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?	34	5	14	1	34/39	Adopted

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?	36	4	14	0	36/40	Adopted
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?	36	4	14	0	36/40	Adopted
38	Do you agree that the requirement for recorded delivery mail and a prescribed style for giving notice should be included in the Rules?	36	4	14	0	36/40	Adopted
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)?	29	9	15	1	29/38	Adopted
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?	25	9	17	3	25/37	Adopted

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?	27	8	18	1	27/35	Adopted
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?	37	2	15	0	37/39	Adopted
43	If so, do you agree that 60 days is a suitable period?	32	7	14	1	32/39	Adopted
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?	36	0	17	1	36/37	Adopted
45	Do you agree that the Keeper should publish guidance on the registration criteria for arbitral awards in advance of the designated day?	37	0	17	0	37/37	Adopted

46	Do you agree that the advance notice form should include both the application form and the advance notice in one document?	32	2	19	1	32/34	Adopted
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?	34	2	17	1	34/36	Adopted
48	Do you agree that the end of the protected period is the appropriate time to remove the delineation from the cadastral map?	32	1	20	1	32/33	Adopted
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?	20	6	23	5	20/26	No further Order
50	Do you agree that the name of the deed used to register a fixed boundary agreement should be Shifting Boundary Agreement?	29	6	18	1	29/35	Adopted
51	Do you agree that the note in the property section of the affected	30	5	18	1	30/35	Adopted

	title sheets should be drafted as follows?						
52	Do you agree that the property section is the appropriate place to enter a caveat against the title?	34	3	15	2	34/37	Adopted
53	Do you agree that requests to vary warranty in between registration events should be submitted on a specified form?	36	0	18	0	36/36	Adopted
54	Do you agree that the Keeper should not restrict warranty purely on the basis of the existence of a caveat?	33	3	18	0	32/35	Not adopted
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?	31	4	19	0	31/35	Adopted
56	Do you agree that any interest rate paid on claims for compensation should be aligned to the Bank of England Base Rate?	31	4	19	0	31/35	Adopted
57	Do you agree that the persons to be notified of a rectification should not be prescribed in the Rules?	29	9	16	0	29/38	Adopted

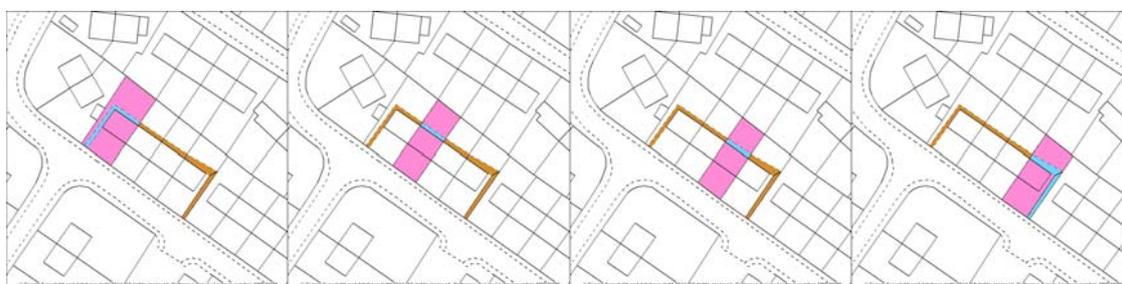
58	Do you agree that the parties consenting to rectification should be capable of demonstrating that they would have title and interest to be heard in court on the issue?	32	3	17	2	32/37	Adopted
59	Do you agree that the Keeper should only consider the removing a burden as a result of section 50 of the 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?	35	2	16	1	35/37	Adopted
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?	26	7	19	2	26/33	Adopted
61	In which circumstances would you need an extract with evidential status showing more than one cadastral unit at a time?			28	26	N/A	Adopted

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?	36	5	13	0	36/41	Adopted
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?	38	2	13	1	38/40	Adopted
64	Do you agree that the Rules should prescribe only one application form?	35	1	17	1	35/36	Adopted
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?	38	1	15	0	38/39	Adopted
66	The Act as a whole: Please give additional comments about any aspect of implementation of the Act and related matters here.					N/A	Policy on signature of application forms: Not adopted

Extracts of Cadastral Units

1. As discussed in Part 11 of this report, the Keeper proposes to issue extracts of single cadastral units from the cadastral map due to the way the current mapping IT systems work: the data for each title is structured so that when an individual title is examined not only its legal boundaries are displayed but also references both within and outwith those boundaries.

2. For example, consider a terrace of four houses each built on their own exclusive ground but with the benefit of a duly constituted servitude right of access to the rear by a path running over the west-most property from the street to the rear of the properties, along the back of the houses and then back to the street at the front over the east-most property. The individual cadastral units are shown below:



3. The route of the servitude is defined on the cadastral map for its full length for each cadastral unit: however, when looking at an individual title the references reflect the legal position in relation to the servitude: for the part of the servitude benefiting an individual title it is coloured blue and for the part burdening the individual title, it is coloured brown.

4. To print an extract, the Keeper can only show the relationship between the houses in the terrace one at a time as the extents of the blue and brown are different for each title. The Keeper cannot therefore issue an extract for the terrace of four houses as three of them will have inaccurate colour references for the servitude - the effect of this would be evident when construing the text in the property and burdens sections of the four title sheets. The result of grouping the four cadastral units is illustrated below:



As can be seen, the relationship between burdened and benefited parts of the servitude for each property become unclear and are technically legally inaccurate, notwithstanding that a likely view could be taken.